

## COUNCIL MEETING

AUGUST 5, 2015

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, August 5, 2015 at 9:00 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock  
Honorable Gary L. Hooser  
Honorable Ross Kagawa  
Honorable Arryl Kaneshiro  
Honorable KipuKai Kuali'i (*present at 9:01 a.m.*)  
Honorable JoAnn A. Yukimura  
Honorable Mel Rapozo

Council Chair Rapozo: Just for the record, Councilmember Kuali'i is right outside.

### APPROVAL OF AGENDA.

Councilmember Kagawa moved for approval of the agenda as circulated, seconded by Councilmember Yukimura, and carried by a vote of 6:0:1 (*Councilmember Kuali'i was excused.*)

Council Chair Rapozo: I just want to say that today we will be taking up C 2015-216 first, which is the cesspool conversion credit program. For any of you that are here for Bill No. 2590, Draft 1, regarding the repeal of the Barking Dog Ordinance, that will be time specific at 1:30 p.m. With that, can I have the next item, please?

### MINUTES of the following meetings of the Council:

July 1, 2015 Public Hearing re: Bill No. 2589

Councilmember Kagawa moved to approve the Minutes as circulated, seconded by Councilmember Chock, and carried by a vote of 6:0:1 (*Councilmember Kuali'i was excused.*)

Council Chair Rapozo: Madame Clerk, next item.

(*Councilmember Kuali'i is noted as present at 9:01 a.m.*)

### CONSENT CALENDAR:

C 2015-200 Communication (07/09/2015) from the Director of Finance, transmitting for Council consideration, proposed amendments to Ordinance No. B-2015-796, as amended, relating to the Fiscal Year 2015-2016 Operating Budget, by Revising the Amounts Estimated in the General Fund, Highway Fund, Liquor Fund, Solid Waste Fund, Sewer Fund, and Golf Fund, to

fund collective bargaining increases and related payroll taxes and benefits for Units 2, 3, and 4. (*Units 2, 3, and 4 Collective Bargaining Increases – \$912,369*)

C 2015-201 Communication (07/14/2015) from the Director of Finance, transmitting for Council information, the Fourth Quarter Statement of Equipment Purchases for Fiscal Year 2014-2015, pursuant to Section 17 of Ordinance No. B-2014-781, the Operating Budget of the County of Kaua'i for Fiscal Year 2014-2015.

C 2015-202 Communication (07/15/2015) from Councilmember Hooser, transmitting for Council consideration, a Resolution Proposing A Charter Amendment Relating To The Public Access, Open Space, Natural Resources Preservation Fund.

C 2015-203 Communication (07/17/2015) from Councilmember Kualii, providing written disclosure of a possible conflict of interest and recusal, relating to the Kaua'i Victim of Crime Act Expansion Project 15-VA-3 Grant application by the Office of the Prosecuting Attorney, due to his employment with the YWCA of Kaua'i.

C 2015-204 Communication (07/17/2015) from Council Chair Rapozo, transmitting for Council consideration and confirmation, Council appointee Jett James Jasper to the Public Access, Open Space, Natural Resources Preservation Fund Commission (At-Large) for the County of Kaua'i – Term ending 12/31/2017.

C 2015-205 Communication (07/20/2015) from the Director of Human Resources, transmitting for Council information, the April-June 2015 Quarterly Report, pursuant to Section 19 of Ordinance No. B-2014-781, relating to the Operating Budget of the County of Kaua'i for the Fiscal Year 2014-2015, which includes new hires, transfers, reallocations, promotions, and vacancies for the fourth quarter.

C 2015-206 Communication (07/24/2015) from the Director of Finance, transmitting for Council consideration, a Proposed Draft Bill to amend Ordinance No. B-2015-796, as amended, relating to Section 19 of the Operating Budget Provisos of the County of Kaua'i, State of Hawai'i, for the Fiscal Year July 1, 2015 to June 30, 2016, to allow the Administration to provide the Council with information related to authorized positions in the Budget Ordinance while at the same time, ensuring that the privacy rights of applicants and employees of the County of Kaua'i are maintained.

C 2015-207 Communication (07/24/2015) from Council Chair Rapozo, transmitting for Council consideration, a Proposed Draft Bill to amend Ordinance No. B-2015-796, as amended, relating to the Operating Budget of the County of Kaua'i, State of Hawai'i, for the Fiscal Year July 1, 2015 to June 30, 2016, to establish a new Legal Analyst position in the Kaua'i Police Department, inclusive of salaries and related benefits. (*Kaua'i Police Department, Legal Analyst – \$124,165*)

C 2015-208 Communication (07/29/2015) from Council Chair Rapozo, transmitting for Council consideration, a Resolution authorizing a performance audit of the Kaua'i Humane Society, pursuant to Sections 3.12(B) and 32.02(A)(2), Kaua'i County Charter.

Council Chair Rapozo: For the Consent Calendar, can we have a motion to take out C 2015-208? We have someone here who wants to testify on that matter.

Councilmember Kagawa moved to receive C 2015-200, C 2015-201, C 2015-202, C 2015-203, C 2015-204, C 2015-205, C 2015-206, C 2015-207 for the record, seconded by Councilmember Kuali'i.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, there is a request to also take two (2) other items off of the Consent Calendar, C 2015-202 and C 2015-206. So there are three (3) items in total.

Council Chair Rapozo: Okay. May someone restate the new motion to exclude those three (3) Consent Calendar items?

Councilmember Kagawa moved to receive C 2015-200, C 2015-201, C 2015-203, C 2015-204, C 2015-205, and C 2015-207 for the record, seconded by Councilmember Chock, and unanimously carried.

Council Chair Rapozo: Thank you. With that, let us take C 2015-202 first.

There being no objections, C 2015-202, C 2015-206, and C 2015-208 were taken off of the Consent Calendar.

C 2015-202 Communication (07/15/2015) from Councilmember Hooser, transmitting for Council consideration, a Resolution Proposing A Charter Amendment Relating To The Public Access, Open Space, Natural Resources Preservation Fund: Councilmember Kagawa moved to receive C 2015-202 for the record, seconded by Councilmember Chock.

Ms. Fountain-Tanigawa: We have one (1) person who wanted to speak on that item, Glenn Mickens.

Council Chair Rapozo: Okay. The rules are suspended with no objections. Mr. Mickens.

There being no objections, the rules were suspended.

GLENN MICKENS: For the record, Glenn Mickens. Regarding Resolution No. 2015-53, I completely support Councilmember Hooser's Resolution to appropriate one and a half percent (1.5%) of the certified Real Property Tax revenue to the Public Access, Open Space, Natural Resources Preservation Fund. To me, there is nothing more important than keeping as much of this beautiful island pristine and as open as possible, which we will need money to do it. I completely support this. I want to testify on two (2) other items, but I will wait until you read the number to come back up. Thank you, Mel.

Council Chair Rapozo: Thank you. Anyone else wishing to testify on C 2015-202? We are doing the Consent Calendar right now just to accommodate people that cannot be here later for the Resolution.

MATTHEW BERNABE: Matthew Bernabe. Is this to increase the percent towards the fund?

Council Chair Rapozo: Yes.

Mr. Bernabe: I support that. That is all I wanted to put on the record.

Council Chair Rapozo: Okay. Thank you. Anyone else wishing to testify?

JOE ROSA: Good morning. For the record, Joe Rosa. When I was working with the State of Hawai'i in the engineering section, I know there were a lot of right-of-way easements. You take the Waipouli area in the Coconut Plantation area—I know there were two (2) right-of-ways from the highway that lead to the ocean out there. One was right on the boundary of the Coconut Grove and the (inaudible) Service Station in Waipouli there, and the other one on the other side of the (inaudible) residence right now where the Islander Hotel or whatever is. There were two (2) right in that area. I do not know how a lot of these right-of-ways to the beaches and whatever got lost, because people used to just park on the side of the road when they could park without disturbing people from driving by or anything. It got lost. Most of them were about ten (10) feet wide, so a car could just barely fit in it because a normal size car is eight (8) feet wide. I do not know what is happening with it. Who is giving it away? I do not know if that is from the old Hawaiian days or how it was later accessible. Even like out of Camp Naue, there was one there, and then afterwards I found out that there is not. Who is giving it away? I hope somebody can find out. Thank you.

Council Chair Rapozo: Anyone else wishing to testify? Again, the matter on the agenda is a resolution to place a charter amendment on the ballot.

KEN TAYLOR: Ken Taylor. I understand. I appreciate this being brought forward and I highly recommend that it be approved and sent to a ballot. This is an issue that has really been official to the young people of today because things happen so quickly and we do not realize how development takes place and things get lost in a short period of time. This is looking to take care of the young people of the island in the future. Thank you for moving it forward.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? If not, I will call the meeting back to order. The motion is to receive.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2015-202 for the record was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

C 2015-206 Communication (07/24/2015) from the Director of Finance, transmitting for Council consideration, a Proposed Draft Bill to amend Ordinance No. B-2015-796, as amended, relating to Section 19 of the Operating Budget Provisos of the County of Kaua'i, State of Hawai'i, for the Fiscal Year July 1, 2015 to June 30, 2016, to allow the Administration to provide the Council



with information related to authorized positions in the Budget Ordinance while at the same time, ensuring that the privacy rights of applicants and employees of the County of Kaua'i are maintained: Councilmember Kualii moved to receive C 2015-206 for the record, seconded by Councilmember Chock.

Ms. Fountain-Tanigawa: We have one (1) speaker, Glenn Mickens.

Council Chair Rapozo: Okay. With no objections, rules are suspended. Mr. Mickens.

There being no objections, the rules were suspended.

Mr. Mickens: Thank you, Mel. For the record, Glenn Mickens. The one I was going to talk on was C 2015-208. Which one is this?

Council Chair Rapozo: That will be next.

Mr. Mickens: Okay. Then I will wait for that one.

Council Chair Rapozo: Okay. Anyone else wishing to testify on C 2015-206? If not, I will call the meeting back to order. There is a motion.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2015-206 for the record was then put, and unanimously carried.

C 2015-208 Communication (07/29/2015) from Council Chair Rapozo, transmitting for Council consideration, a Resolution authorizing a performance audit of the Kaua'i Humane Society, pursuant to Sections 3.12(B) and 32.02(A)(2), Kaua'i County Charter: Councilmember Kualii moved to receive C 2015-208 for the record, seconded by Councilmember Kagawa.

Council Chair Rapozo: Thank you. With no objections, I will suspend the rules. Are there any registered speakers?

Ms. Fountain-Tanigawa: We have three (3) registered speakers. The first registered speaker is Basil Scott, followed by Shawn Hurt, and then Glenn Mickens.

There being no objections, the rules were suspended.

BASIL SCOTT: For the record, Basil Scott. Thank you, Council Chair Rapozo, for bringing this matter up. I support this Resolution because I think it is important. I submitted testimony by E-mail also. A couple points I would like to make here are that one, we have experienced financial problems ourselves with billings that miscategorize what the service was for. We do fifteen thousand dollars (\$15,000) to twenty thousand dollars (\$20,000) of spay, neuter, and other veterinary services at Kaua'i Humane Society, and these are often or typically, I would say, characterized as "Swedish Chocolates" or other nonsensical services. That is troubling because it means that that expense will never be probably correctly reflected in the financial statements of the Kaua'i Humane Society. If it is happening to us, then I suspect that it is happening in other areas

as well. The second point I would like to make is that we have concerns with legal compliance for mandated hold times for animals. We have experienced this ourselves where animals were not held for the required forty-eight (48) hours. We know that other people have experienced it to and we have information that suggests that this is a standing policy and that this ordinance would have been valid hundreds of times. I think it is very important that that kind of matter be addressed in the audit. The last thing I would say is that it is surprising when we kind of look at what has been going on for the last five (5) or six (6) years, that the request for funding from the County continually go up, and that is because the number of animals that are handled are continually going down. If we were to use 2010 as a base year, it seems like that budget should be something closer to four hundred thousand dollars (\$400,000) for what the County provides, instead of the current seven hundred sixty thousand dollars (\$760,000). I think there is a large amount of money that is sort of at question here and I think that is good for you to take a look at this so that the County knows that you are getting the right thing, what is required, and that you are not putting money into areas that should not be put into. I will just close by saying that I think it needs to address the financial legal compliance and the efficiency of the services that are provided. Thank you very much for your consideration.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: Good morning, Basil. I just need clarification. You said "we have experienced problems." Who is the "we?"

Mr. Scott: Thank you for asking that. "We" is the Kaua'i Community Cat Project. We are a non-profit. We are a cat rescue organization and we also do Trap-Neuter-Return (TNR) to try to control feral cat populations. That is the organization. Thank you.

Councilmember Yukimura: You said you have experienced problems in what?

Mr. Scott: The services that we receive from Kaua'i Humane Society are often build to an incorrect category. We are talking about a fair amount of money here. For us, it is a lot of money. While we are receiving veterinary services, the billings show that we received chocolate. That means that each and every one of those bills has to be corrected by hand when we have our bookkeeper certify our results and our expenses for the year. Kaua'i Humane Society is a much larger organization than ours. It is about forty (40) times bigger financially. I am strongly suspicious that it is too big to go and certify each of these fifty dollar (\$50) and one hundred dollar (\$100) expenses, so I suspect that they are simply incorrectly accounted into the totals, so the financial results would reflect an incorrect number. That is the concern.

Councilmember Yukimura: Okay. Thank you.

Council Chair Rapozo: Thank you. Councilmember Kagawa.

Councilmember Kagawa: Are you testifying now because you will not be able to come back later?

Mr. Scott: Yes.

Councilmember Kagawa: I want to ask this question since you are here. What is the standard of determining whether a cat is feral or a home-owned cat? I picture a cat being an owner's cat if the majority of the time stays in the premises of the person's home, and I consider a feral cat a cat that is wandering in the neighborhood majority of the time.

Mr. Scott: That is fair. There is no absolute black and white line; it is a little gray. People use usually a behavioral assessment, which the cat will absolutely not approach a human or they will, as well as does the cat stay in one place and has one (1) owner or does it kind of wander around.

Councilmember Kagawa: Has there been any estimates recently of how much residential cats there are and how much feral cats there are that we are dealing with? Like the parakeets, I just heard an estimate that said there are approximately ten thousand (10,000) parakeets in the Līhu'e and Kīlauea area. I am wondering how many feral cats we are talking about.

Mr. Scott: There has been an estimate and before I will say the number, I will just say that this was a best estimate that could have been come up with, given limited time and zero funding. That estimate was that there are ten thousand (10,000) to fifteen thousand (15,000) feral cats and there are likely twelve thousand (12,000) to fifteen thousand (15,000) owned cats. For the fifteen thousand (15,000), we think many of those cats are in wild areas, which means that there are about ten thousand (10,000) or eleven thousand (11,000) that are around where we live.

Councilmember Kagawa: Thank you. I have one last question. I recently camped last week at 'Anini and I have been camping there every year. When I woke up to use the bathroom, it was scary to see the table where we have all the food because when I flashed that light, I saw eyes of probably twenty (20) to thirty (30) cats. In the past when we used to go there, maybe there are one (1) or two (2), but there is a huge cat population at 'Anini now. How do we determine or how do we get them to be spayed or neutered? Once we spay or neuter them, what do we do? Do we let them back at 'Anini?

Mr. Scott: I will answer the last part first. First, let me say that I am glad you asked this question because 'Anini has been a real problem. There were, and I will use the past tense, two (2) people who were taking care of the cat population at 'Anini. They had it down to I believe ten (10) in that vicinity. The cats are trapped, neutered, and returned, and then over time the population decreases because cats die. But what happened at 'Anini, and this is something that unfortunately happens a lot, is that somebody killed all the cats. We are pretty sure they were poisoned and we kind of know who did it, but as any of the lawyers in the room would tell you, this is a tough crime to prove. After all the cats were killed, the people who were taking care of the cats left and they did not really want to get into a confrontation with the person who we think killed the cats. It is very discouraging when you go through something like that. Now, it sounds like there are more cats down there and that is actually not a surprise because what happens is the food that the campers bring, and not only do the cats come and eat that, but it draws rats and they come for that, too. When the caregivers were there, if a new cat showed up, they would pull that cat out and they would either adopt it or spay it. Overtime, it would just keep the population reduced, but when they left, it went the other way.

Councilmember Kagawa: There was so much that it literally just scares you. I shined the light in the dark and I saw tons of eyes on the food table.

Council Chair Rapozo: We are going to hold off. I think that discussion is one that we need to bring here and there is a task force. I know Councilmember Yukimura is running a Feral Cat Task Force, which we should be getting an update shortly.

Councilmember Yukimura: Basil is a member.

Council Chair Rapozo: Yes. Thank you. Next registered speaker.

Ms. Fountain-Tanigawa: The next registered speaker is Shawn Hurt, followed by Glenn Mickens.

SHAWN HURT: Good morning, Councilmembers. Thank you for hearing us this morning. I am here to support Resolution No. 2015-55. This appropriation of County funding by Kaua'i Humane Society is the first step for holding Penny Cistaro and the Board of Directors accountable to the County and the taxpayers. However, a full reorganization of Kaua'i Humane Society leadership and the Board of Directors is paramount for the quality of our shelter, our community, and most importantly for our animals. Chair Rapozo has received and reviewed a binder containing many statements and documents that was also shared with the current Board of Directors back in April of this year. The purpose of the meeting with the board was to voice the many concerns from past and previous employees; the staff veterinarian, significant donors, long time volunteers, founders of Kaua'i Community Cat Project, and members of the community. The concerns and issues pertaining to the current Executive Director are growing every day she remains at Kaua'i Humane Society. One only has to read Craigslist, Facebook, or overhear conversations to glean that Ms. Cistaro has exhausted her services on Kaua'i. Her leadership has caused a hostile work environment. Most long time employees have been either fired or they have left since she has come to Kaua'i Humane Society. Due to an abundance of unrest within the community, most of the large donors have frozen their donations until Ms. Cistaro has been removed. There is a part in the Kaua'i County Code 22.24 that requires animals to be held for forty-eight (48) hours and there are no exceptions listed. Kaua'i Humane Society employees have stated that the policy guidance to euthanize all kittens weighing less than one (1) pound and to euthanize kittens up to two (2) pounds, depending on circumstances. These policies appear to systematically violate the ordinance. This is particularly serious because we depend on the Kaua'i Humane Society and its Director to ensure that the animal ordinances are implemented correctly. Especially troubling is the Salt Pond kittens' incident. Not only did Ms. Cistaro have the healthy euthanized in less than twenty-four (24) hours, as indicated by Kaua'i Humane Society records, she then falsely and publically stated to the contrary. The Board of Directors, mainly Emily Larocque and Elizabeth Freitas, have ignored many employees' pleas for help, including grave concerns from their most important asset: their staff veterinarian. These employees have witnessed and have been charged with senseless and unnecessary high rates of euthanasia in less than ideal circumstances. The board is led by cronies who have let Kaua'i and our animals down. The Kaua'i Humane Society has ceased to exist as a safe place to take a lost or found animal. Donations are drying up, Humane Officers are not well-staffed, and the number of abused and suffering animals is increasing. Ms. Cistaro has left a path of destruction from Seattle to Sacramento, and now to Kaua'i. Thank you.

Council Chair Rapozo:

Thank you. Next speaker.

Ms. Fountain-Tanigawa:  
by Matthew Bernabe.

The next speaker is Glenn Mickens, followed

Mr. Mickens: For the record, Glenn Mickens. Thank you, Mel. I support this Resolution one hundred percent (100%) and I applaud Mel for introducing it. The only caveat I have is why we have waited so long to get an independent audit to stop all the "he said, she said" stuff that has been going on for a long time. "This is wrong. They did this; they did that." The only way that we are ever going to get a resolution is to do an independent audit, completely independent. Somebody steps in and says that these are the facts. To whoever is wrong, the facts are obviously going to point that out. This controversy has been going on for way too long. I am tickled to death that you have introduced this Resolution and I definitely support it. Thank you, Mel.

Council Chair Rapozo:

Thank you. Next speaker.

Ms. Fountain-Tanigawa:

The next speaker is Matthew Bernabe.

Mr. Bernabe: Matthew Bernabe for the record. I support the audit and I just have one little story to tell that explains why I support this. One day, my friend and his girlfriend broke up and they had a small, little dog. They were very attached to this dog and they could not bear to bring it in, but they did not want either of each other to have the dog. So I volunteered to bring their dog in. When I got there, I left the dog in my kennel, went in, and donated whatever money my friend gave, and while I was in there, I saw another young, local couple crying over their dead dog. Their dog got hit and it died. In the parking lot, I said, "This is 'so and so's' dog." They said, "We know him." I said, "This is the scenario. Do you guys want a new dog?" They took the dog. I went back in and told the lady, "Keep your folks' money. I got rid of the dog." They melted down on me. They had a problem that I placed that dog with a loving family and I questioned them right then and there, "Is that not your model? Are you not supposed to be placing these animals in homes?" They had a barrage of why I was wrong. Ever since then, I have not trusted them. This was a while back. There have been several other stories that I am not going to go into, but that one story sums up why I do not trust them. The fact that they even had power with that other dog barking issue is a secondary issue, but all of this testimony that I am hearing today from the people who deal with them daily—I do not deal with them daily, but it just supports my initial feeling and hunch that these folks are not in it for the betterment of the dog. It did not sound to me that they cared that that dog got a loving family who was going to take care of that dog. All they wanted to do was process that dog and put it in the books, get it on the numbers. Who knows? Maybe even put the dog down from what it sounds like. With that said, I do not have enough expertise on these folks, but for my initial dealings with them, and I have only dealt with them maybe four (4) or five (5) times—I have adopted dogs. For that purpose, I do adopt dogs. I like that aspect. But to this other side, that story sums up the feeling that most of these people have to me. Thank you everybody.

Council Chair Rapozo:

Hang on, Matt. Councilmember Yukimura.

Councilmember Yukimura:

Matt, when did this incident happen?

Mr. Bernabe: This had to happen at least eleven (11) years or twelve (12) years ago, right before I lost my leg. I am not sure. I do not always keep track of those types of significant moments in time. The memory stays. I do not have the exact date. I can follow-up and ask my friend when he broke up with his girl. It is guaranteed that he knows that date.

Councilmember Yukimura: Well, it was about ten (10) years to eleven (11) years ago.

Mr. Bernabe: At least. However, that to me still is what it sounds like is still going on. It is a numbers game versus the placement of animals. That is what it sounds like to me.

Councilmember Yukimura: Did your friend's dog get to the couple ultimately?

Mr. Bernabe: They took it and left. I gave it to them. That dog eventually died. I see that couple to this day. My point of the story is that I placed this dog with a couple who had just lost their dog and they loved it. I think that is what the mission should be for the Kaua'i Humane Society.

Councilmember Yukimura: It is a wonderful story with a good ending. Your concern was the attitude and reaction of the staff to what happened.

Mr. Bernabe: Absolutely. It was (inaudible) and I was not expecting that. I thought I was going to be the hero of the day and it turned out that I was not the hero of the day in their eyes.

Councilmember Yukimura: Well, you are my hero.

Mr. Bernabe: Thank you very much.

Council Chair Rapozo: Is anyone else wishing to testify? Mr. Rosa.

Mr. Rosa: Good morning again. For the record, Joe Rosa. The feral cats are a problem. You are going to try and save cats that are wild and you want to save domestic cats, cats that get lost, or cats who wander away from homes and the Kaua'i Humane Society picks them up. You have to decide one way or the other: Are you going to keep all the feral cats on this island? Who is going to be supplying them and supporting them? You have to feed them, neuter them, and then release them. Who is going to pay for it? It is the taxpayers. These are hard times. If the animal lovers like to have things the way...they talk about saving them, then you have to have these people involved where they make a monthly donation. I have a lot of letters that come from the mainland from animal societies who are seeking funding for their humane societies. I get them from the big cities like St. Louis, Missouri. Why not on Kaua'i? They do not sponsor any fundraising for support of the Kaua'i Humane Society. Those are the kinds of things I know that if they want things like that there, it could be self-supporting by the community themselves, not all of the taxpayers. I am an animal lover. I had a cat that was spayed and everything, and she died. But I did not want to go because it sort of delays me from when I used to go out traveling because I would be worried about my cat. Who is going to feed it and stuff like that there? It is up to the people. Another thing is now with the Kaua'i Humane Society, I am going back

four (4) years ago to October of 2011. What happened at that time? Nothing was done. Everything was swept under the rug. That is when I started noticing that a lot of the things started to happen with the Kaua'i Humane Society. All kinds of issues came up with the Kaua'i Humane Society. The poop bags on the bike path thing...there are no poop bags and no gloves. I can see it because something that happened with finances. To me, what happened when the Director disappeared in thin air is that things started to happen and nothing was done. Nobody was questioned. I know the following year they came before the County Council for funding and something was mentioned about the loss of the donation portion of the...

Council Chair Rapozo: Mr. Rosa, I have to stop you there. Your time is up. Is there anyone else wishing to testify for a second time?

Mr. Rosa: I am glad that the Council has...

Council Chair Rapozo: Joe, hold on. Is there anyone else wishing to testify for a second time? If not, please continue.

Mr. Rosa: I am glad that the Council is doing this audit. It is long overdue and there are many audits that are long overdue that the public would like to know about.

Council Chair Rapozo: Thank you. I will call the meeting back to order. There is a motion and a second. Councilmember Kagawa.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: I just want to keep it quick. We are going to come up with the Resolution after and I wanted some of these people from the public to hear some of the concerns that I have with the Kaua'i Humane Society at this point and why I am very happy with the audit that we are trying to do to see where we are at with the Kaua'i Humane Society in general. I have some pretty big concerns about these feral cat populations, feral chicken populations, and the feral parakeet populations. Why I say the Kaua'i Humane Society in relation to those is that the Kaua'i Humane Society has oversight over the humane treatment of controlling these populations. We cannot just poison birds or shoot them. You need authorization permits, and they are the oversight authority to the Department of Land and Natural Resources (DLNR), Department of Agriculture, and community groups that want to get involved. There is no doubt in my mind that there is a lot of damage going on to our native birds, native plants, etc., and the potential problems to human lives with passing diseases that can be transferred from these feral populations as they grow wild. I understand that we have a Feral Cat Task Force, but every day we wait and delay or every year that we keep on putting it off, our plan or our findings, the numbers are just growing astronomically. The parakeets started with two (2) parakeets maybe ten (10) years to fifteen (15) years ago, and we are at ten thousand (10,000) right now. I would think the feral chicken population is close to one hundred thousand (100,000)...

Council Chair Rapozo: Councilmember Kagawa, can you bring it back to the financial audit or the proposal?

Councilmember Kagawa: Okay. There are a lot of concerns. I think it would be a good thing to see where the Kaua'i Humane Society is at as we have these concerns that are just growing before us. Thank you.

Council Chair Rapozo: Thank you. Anyone else? We will have discussion later when we come across the Resolution, but I am giving everybody an opportunity to speak now. The only thing I want to say is that we have been getting a lot of testimony on both sides, supporting and not supporting, but I do want to make one thing clear. I am not sure where in the world the people got the idea that this audit will cost one hundred twenty-five thousand dollars (\$125,000), because it is not going to cost one hundred twenty-five thousand dollars (\$125,000). I believe the newspaper printed a reference to one hundred twenty-five thousand dollars (\$125,000), but that is what is available to us for performance audits, and the audit will not cost one hundred twenty-five thousand dollars (\$125,000). I just wanted to make that point clear because that seems like the basis of the opposition, "Why waste one hundred twenty-five thousand dollars (\$125,000)?" It is not a waste. The reason why we did not do it earlier, Glenn, is that only recently, some of the issues brought up by the public today, as well as what we have received, has really made this a priority issue in my mind because of the substantial amount of money that we provide to the Kaua'i Humane Society. The other reason simply is that if you have followed the Council for the last ten (10) years to twelve (12) years, I think I have introduced several audit resolutions and all have failed. This Council and the Administration traditionally does not want to do audits. I am hoping we can get that support today and hopefully this is the first of several audits to make sure we are running everything efficient. Councilmember Hooser.

Councilmember Hooser: I just have a clarification. The Resolution states that one hundred fifty thousand dollars (\$150,000) is available for the audit. You mentioned one hundred twenty-five thousand dollars (\$125,000), but I believe that is where the number probably came from because the Resolution says that the Operating Budget appropriates one hundred fifty thousand dollars (\$150,000) for audits which may be used, so it implies that that money is available for this audit, even though I am hoping it would not cost this much.

Council Chair Rapozo: Yes, it is available. Obviously, when we do a resolution for an audit, we have to show the availability of funds. We cannot just approve an audit without a source of money to pay for it. I can see how that assumption came about. With the E-mails that I have received, the people have gotten the perception or the impression that it is a one hundred fifty thousand dollar (\$150,000) audit, but from what I have been told, it is not.

Councilmember Hooser: That would be my follow-up question. How much will the audit cost?

Council Chair Rapozo: I think we had an estimate of about...what was it?

Ms. Fountain-Tanigawa: Under seventy-five thousand dollars (\$75,000).

Council Chair Rapozo: I am thinking probably forty thousand dollars (\$40,000) to fifty thousand dollars (\$50,000).

Councilmember Hooser: Okay. Thank you.



Council Chair Rapozo: When you consider our Comprehensive Annual Financial Report (CAFR) audit, which goes through all the departments...what is the bill on that annually? About two hundred ten thousand dollars (\$210,000) or so. If you think about the scope of that audit and then we are doing one contract, it is going to be significantly less. Any other discussion? Councilmember Chock.

Councilmember Chock: Thank you, Chair. I just wanted to clarify the scope of the audit as a performance audit, rather than a financial audit. I just got confirmation that our procurement process requires an annual financial audit. My interest is seeing how we might be able to move towards requiring non-profits that we give money to on an annual basis of more than five hundred thousand dollars (\$500,000) or whatever number that is to be more responsible for these audits. I think that it is feasible if we are going to be giving them money that the kind of audits that we want to get information on are done internally or independently, but of the non-profits and I am not sure if we, as a County, needs to pay for it. I am supportive of this, but I would like to see if there is room for that kind of action in the future. Thank you.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: So are we are planning to do this audit, assuming the Resolution passes, through the Office of the County Auditor?

Council Chair Rapozo: The procurement will be done through the Office of the County Auditor. It would be done by an outside contract auditor.

Councilmember Yukimura: Well, I have some concerns because we do not have an auditor in place and the scoping of the audit, especially one where it is limited to the program, which the County is funding, which is not as simple as a fiscal audit. It is a little more complex. To not have an auditor that knows how to both scope the work and oversee it is of concern to me. One of my questions is whether the Council has separate authority to do an audit separate from the County Auditor, and if not, if we are doing it through a County Auditor, how can we do it without a County Auditor?

Council Chair Rapozo: First of all, we are doing it under the authority of Section 3.12(B). Before we had the Office of the County Auditor, this body had the authority and the authority still stands today. The fact that we do not have an Auditor in his seat is why we are contracting it out. It is going to be done by a certified auditor contracted out using the authority of Section 3.12(B) and the Office of the County Auditor will simply be doing the procurement process to process the procurement. The authority is our authority. We can audit any function of the County, any program of the County, and any function that we provide funding for. This has been vetted out legally. If you have any questions for Mauna Kea, I suggest you talk to him. At the end of the day, this body retains that authority to audit any function of this body. If not, obviously chaos would occur. This Council traditionally has always avoided the audits and I want to break that tradition and say, "No, we are going to start auditing. We want to start auditing. The funds are available." Believe me, there is more than just the Kaua'i Humane Society. It is just that because in my opinion, it is the right time to do it because of what I am feeling is the public's loss of faith or the integrity and the fact that they are losing revenues from private donors because of some of the problems. I am

hoping that the audit comes out fine, but that is not for me to say. That is why we have the audit authority and that is why we are going to go down that road and let an independent person go and check. What you heard today regarding the charges being charged off to "Swedish Chocolates" is disturbing. That is very disturbing and that is not one time. A lot of the public is thinking that it is a "witch hunt," but this was the binder that was brought to me that I have done my research. Our staff compiled this Pre-Audit Risk Assessment and it is confidential obviously. I do not do press releases when I do stuff here. The fact of the matter is that there is a concern and the concern needs to be addressed. The only way we can address it is through an independent audit through the authority granted to us in the Charter.

Councilmember Yukimura: So the way I read the Charter, when the County Auditor provisions were approved by the people of the County, the voters of the County, all audits now have to be done through the Office of the County Auditor.

Council Chair Rapozo: That is not true, JoAnn.

Councilmember Yukimura: Okay. I would like to have a legal opinion that that is the case.

Council Chair Rapozo: Why do you not help me out? Where does it say in there that all audits need to be done by the Auditor? Why do you not start with that, JoAnn?

Councilmember Yukimura: Pursuant to Section 32.02, "Powers, Duties, and Functions of the County Auditor: Pursuant to County Charter, Article III, Section 3.17 Investigation, the county council is empowered to establish the office of the county auditor. It shall be the duty of the auditor to cause to conduct or caused to be conducted to performance audits of the funds, programs, and operations of any agency or operation of the County as requested by the council by resolution, as authorized by Section 3.12." The way I read this, which I am not sure, so that is why I am asking for a County Attorney's opinion, is that the duties of the Auditor are now to conduct the audits that are authorized under Section 3.12. I see a reason for the audits, but I think we have to follow the Charter and I think there was an intention that the County Auditor be separate from the County Council as a professional body that knows how to do audits and if we do not have an auditor in place with that kind of accountability and expertise, I am concerned about how this performance audit will be structured and overseen.

Council Chair Rapozo: Councilmember Yukimura, are you saying that this Council cannot do an audit?

Councilmember Yukimura: I am asking the County Attorney the question as to whether the Council's power of audit was modified by the subsequent County Auditor provisions of the Charter, such that it needs to now be done through an Office of the County Auditor and we have to have an auditor in place for that.

Council Chair Rapozo: Where is Mauna Kea? The rules are suspended. Let me just read what you just read, and I am not clear on what you are saying, it says, "Performance audits of the funds, programs, and operations of any agency or operation in the county as requested by the council by resolution, as authorized..." What we have before us is a resolution requesting an audit, Section 3.12...

Councilmember Yukimura: Resolution authorizing an audit...I would argue that authorization is by 3.12, an authorization for an audit, but the process is to be requested by the Council and is to be done through the County Auditor.

Council Chair Rapozo: Mr. Trask.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Auditor: Thank you, Chair. Aloha Honorable Councilmembers. For the record, Mauna Kea Trask, County Attorney. When approaching issues regarding statutory construction, what you do is if there are no legal provisions provided, you look at the words as a normal, ordinary meaning and you also read any and all rules, statutes, and ordinances in what is called "*in pari materia*" with each other, which means if one ordinance or rule says something and there are other related rules or ordinances, you read them all and try to effectuate the intent of the legislature as stated by those rules together. You want to read the rules comprehensively so as to make sense to all of them. It is generally discouraged to interpret them so as to exclude any part. A relevant section to read in this question is 3.12, specifically 3.12(B), which provides in pertinent part, "Performance Audit" is the title of (B), as follows, "To ensure and determine whether government services are being efficiently, effectively, and economically delivered, the council may at any time provide for a performance audit of any of all of the offices, agencies, departments, programs, and operations for which the county is responsible. The council may exercise its authority to conduct performance audits through the hiring of a qualified in-house auditor or through the hiring of a qualified auditor or both." When the County Auditor section was adopted, it is my opinion that it is to read *in pari materia* with Section 32.02. Again, as stated before, 32.02(A)(2) provides that it shall be the duty of the auditor to conduct or cause to be conducted, "Performance audits of the funds, programs, and operations of any agency or operation of the county as requested by the Council by resolution, as authorized by Section 3.12." So when reading all of that together, I think that this Council can either hire through an in-house auditor, which would be the County Auditor, or go outside or both. In this case, I do not think it is reasonable to read this to exclude that the Council has abrogated its powers under 3.12 to do that. I do not think it offends any of those rules to read it that way. Also if you look at the determination of scope of an audit, Section 3.12(B)(1) and (2) provides the scope of the audit shall be in accordance with the terms of an assignment, refer to the Office of the County Clerk by the County Council or written contract to be approved by the County Council and signed by the presiding officer. Then it goes through what you can look at. I think when read all together, although it was a good question, I do not think that this Council is prohibited from conducting a performance audit using outside services.

Councilmember Yukimura: That is not the question.

Mr. Trask: I am sorry. I misunderstood your question.  
Can you please rephrase?

Councilmember Yukimura: The question is whether Section 3.12, as modified by the subsequent section of the County Auditor, is requiring the audits that are authorized in Section 3.12 to be done through the Office of the County Auditor.

Mr. Trask:

No. I think that question assumes...

Councilmember Yukimura: Why is it saying that in Section 32.02 that, "It shall be the duty of the auditor to conduct or cause to be conducted performance audits," as authorized by Section 3.12?

Mr. Trask: Because Section 3.12 provides that, "The council may exercise its authority to conduct performance audits through the hiring of a qualified in-house auditor," which I think would be the County Auditor.

Councilmember Yukimura: Excuse me.

Mr. Trask: Excuse me—I am answering your question. ... "or through the hiring of a qualified auditor or both." In your question, you assume and state that 32 amended 3.12, but I do not think that is true. I think you read them together.

Councilmember Yukimura: Section 32 was done subsequently to Section 3.12...

Mr. Trask: Yes, but that does not automatically repeal anything.

Councilmember Yukimura: And it says that it shall be the duty of the auditor to conduct these audits that are authorized by Section 3.12.

Mr. Trask: There are no express repeals...

Councilmember Yukimura: Mauna Kea, I would like to see this in a written opinion supported by case law and analyzed in consultation with your staff.

Council Chair Rapozo: That will be sent over as a request.

Mr. Trask: Can we take a recess real briefly?

Council Chair Rapozo: For?

Mr. Trask: I responded to her opinion. She sent me a request...

Council Chair Rapozo: I heard.

Mr. Trask: I rushed and I delivered it.

Council Chair Rapozo: I am not going to delay this process. We have met extensively, Mr. Trask. Our staff has met with you. We have gone through this legal review. That is fine. She has a question. The fact of the matter is that Section 32 in the Charter does not repeal the Council function. That is clear. The fact of the matter is that the County Auditor was intended to be an independent agency, which does an audit plan every year. That auditor would determine the audits that would be done out of his office based on Section 32 for that year. If the Council believes that we want an audit done on a matter that is not part of his audit or her audit plan, then we do a resolution, supply the funds, and then we can either contract our own or we can send it to the County Auditor's

Office, which is what we are doing, simply because the way the County Auditor is structured for procurement as the ability to utilize a solicitation of services contract where auditors put their name on a list. It is much quicker. The funds are there and that is the purpose. At the end of the day, we vote. If anyone has a legal question or concern, please voice it, but really in the plain reading of the Charter by non-attorneys, I guess, clearly give us the authority and we are following the process to the "t," resolution to the auditor.

Mr. Trask: I would just like to add that I do not think there is any basis to say that Section 32 repealed...

Councilmember Yukimura: Nobody is saying that it is repealing it...

Mr. Trask: Excuse me...

Council Chair Rapozo: Hold on, JoAnn.

Councilmember Yukimura: It is modifies it.

Council Chair Rapozo: JoAnn, he is speaking.

Councilmember Yukimura: No, but it modifies...

Council Chair Rapozo: Recess.

There being no objections, the meeting recessed at 9:52 a.m.

The meeting reconvened at 9:59 a.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order. Councilmembers, I am going to ask that we receive this item and reserve the discussion for the Resolution because we have Ms. Pruder here from the State Department of Health. She has a flight to catch at noon and she has some very important information to discuss for the public regarding our cesspool program. I know it sounds pretty funny, but it is serious for many people. We are going to do that. For those of you who are here, the item we are discussing right now is just the communication, so it takes no action. The Resolution will be later where we will actually vote whether or not we move forward with the audit. If I can get the Members to agree, we will go ahead and receive this item for now.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2015-208 for the record was then put, and unanimously carried.

Council Chair Rapozo: Thank you. We will take the next item out of order, which is C 2015-216.

There being no objections, C 2015-216 was taken out of the order.

COMMUNICATIONS:

C 2015-216 Communication (07/30/2015) from Council Chair Rapozo, requesting the presence of Sina Pruder, P.E., Engineering Program Manager, State of Hawai'i, Department of Health, to provide a briefing on Act 120 (2015) relating to cesspools, its impact on Kaua'i residents, and the availability and qualification criteria for the Cesspool Upgrade, Conversion, or Connection Income Tax Credit: Councilmember Kagawa moved to receive C 2015-216 for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: Thank you for being here. I apologize for the delay, Ms. Pruder. I know you have some very important information to state for us. Councilmember Kagawa.

Councilmember Kagawa: I have a process question. Can she let us know at what time she has to leave so that we can all be courteous of each other to get our questions in and share her time.

Council Chair Rapozo: Her flight is at 12:45 p.m.

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: Ms. Pruder, please state your name for our captioner, and then you may proceed with your presentation.

There being no objections, the rules were suspended.

SINA PRUDER, P.E., Engineering Program Manager: My name is Sina Pruder. I am with the Department of Health (DOH) Wastewater Branch. Good morning, Council Chair and Councilmembers. I am here because I wanted to inform you, as well as the residents of Kaua'i, that the Department of Health Wastewater Branch is actually in the process of proposing new rule amendments to our Chapter 11-62, "Wastewater Systems," also known as the "cesspool rules." Last year in September, we did propose amendments. Since then, our Governor did not sign the rules, so it was pulled back from our current Governor and we restarted the process. With these new rule amendments, there are two (2) major changes that we are proposing. One is the banning of new cesspools, which does not really impact Kaua'i because Kaua'i banned new cesspools in 1991, so that law is actually going to impact Hawai'i island, Maui, and Moloka'i. The second one that we are looking at is implementing Act 120, and that was actually passed by the Legislature this year, which actually provides a temporary tax credit for five (5) years for the upgrade of qualifying cesspools. I can give you the definition of what the qualifying cesspools are. I have to mention that one amendment last year that we actually pulled back was requiring the upgrade of cesspools upon sale of a property, so that is not going to be proposed in this year's rule amendments. Another thing I wanted to add is that next week Wednesday, August 12<sup>th</sup>, at 5:00 p.m., we are going to have a public meeting at the Kaua'i District Health Office Conference Room. The address is 3040 Umi Street.

Before I talk about Act 120, I have to explain why it is important to reduce cesspools in Hawai'i. I am not sure if you all know, but the inventory of cesspools in Hawai'i is over eighty-eight thousand (88,000) cesspools. Fifty-five thousand (55,000) of them are actually on Hawai'i island and we have thirteen thousand five hundred (13,500) just on Kaua'i alone. We are the only state that allows the construction of new cesspools. Currently, there are about eight hundred (800) new cesspools that are being constructed in the State. The cesspools in Hawai'i release

about fifty-five million (55,000,000) gallons of untreated wastewater. You are trying to think fifty-five million (55,000,000) gallons—that is actually kind of equivalent to the amount of wastewater that is received at the Sand Island Wastewater Treatment Plant and that is the biggest treatment plant in the State that serves over one million (1,000,000) people. That is kind of like what you are thinking if you are trying to compare. The cesspools are releasing that much. Why we are concerned is that cesspools actually are the leading reason for the contamination of groundwater, surface water, and streams. There is a potential source of disease-causing pathogens and chemicals. Based on this, that is why Act 120 was introduced and it was originally introduced in the Legislature as House Bill (HB) 1140. What the lawmakers did was propose a bill to provide tax credits for cesspools that were at high-risk to the ocean and drinking water source. Act 120 was passed and what it does is provides up to ten thousand dollars (\$10,000) per taxpayer for qualifying cesspools for the upgrade of a cesspool to a septic tank or aerobic treatment unit, or to a connection to a sewer system if it is available. The tax credits are available for five (5) years, starting in 2016 and ending in 2020. There is going to be a five million dollar (\$5,000,000) cap each year from 2016, ending 2020. This would address approximately six thousand nine hundred (6,900) cesspools in Hawai'i. If you are looking at Kaua'i, one thousand five hundred (1,500) may be eligible. Any taxpayer that is not eligible to claim the credit in the taxable year may claim it in the subsequent taxable year like 2017 to 2020.

What is a qualified cesspool? A qualified cesspool is a cesspool that is actually located two hundred feet (200') of a shoreline perennial stream wetland or within a drinking water source. It is actually the DOH's responsibility to certify these cesspools. We do have tax map keys or lists of property owners that may have eligible cesspools, but the ones that are located within two hundred feet (200') from a stream or the ocean will probably have to be verified by a license surveyor or a licensed engineer just to ensure that it is within two hundred feet (200'). The ones that are located within a drinking water source protection area are going to be certified by the Department of Health because the source water protection area information is usually confidential and it is not released to the public, so there is no way a surveyor or engineer would know whether or not it they would be in a swap. We will not be able to implement Act 120 until we promulgate our rules, which we are kind of estimating that it might be done either in December or in January. One of the things for Kaua'i was that there was an on-sight disposal risk assessment survey that was done and one of the problem areas here that was identified was the Wailua and Kapa'a area. You have your maps there, so you will see that there is a cluster of cesspools in the Wailua and Kapa'a area, and in working for the Department of Health, you can look into upgrading, but one of our recommendations would probably be looking into expanding your sewer capacity, so your sewer line...I know you have the Wailua Treatment Plant that can probably take more capacity, so one of my recommendations, especially the properties that are along Wailua River and along the coast, is that if you can probably look for money to expand the sewer system so that you can have those properties to connect. If you do it within five (5) years, those residents would be eligible to connect and apply for the tax credit. Other than that, if you have any questions, I can try to answer them.

Council Chair Rapozo:

Councilmember Chock.

Councilmember Chock: Thank you, Sina, for the presentation. I saw you yesterday at the Water Conference. I was wondering if you have been in touch with the Hanalei Watershed Hui regarding cesspool transitions.

Ms. Pruder: I have not heard from that Hanalei association.

Councilmember Chock: My understanding from Maka'ala was that she had obtained Environmental Protection Agency (EPA) funds in order to transition. I think she was estimating a specific kind of system and I think she was appropriating fifteen thousand dollars (\$15,000) on her end of the grant. I was wondering if the ten thousand dollar (\$10,000) tax credit in this could be combined in order to do these transitions. That was my first question.

Ms. Pruder: So it would be for the property owner because it cannot be like an association. What would happen is that...it does cost probably between twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) for an upgrade of a cesspool to a septic tank system, so if they had a grant that paid for ten thousand dollars (\$10,000) of it, they still could come in with the eligible cost for the portion that they still paid out of pocket. If they gave us the receipts, they would be eligible for the tax credit.

Councilmember Chock: Just to confirm, the systems cost about thirty thousand dollars (\$30,000). Is that right?

Ms. Pruder: Yes, between twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000).

Councilmember Chock: Amazing. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Thank you for being here. You just said that the cost of a septic system is twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) and the tax credit is up to ten thousand dollars (\$10,000).

Ms. Pruder: Yes, up to ten thousand dollars (\$10,000) and that is the max. The reason why we say "up to ten thousand dollars (\$10,000)" is because it also covers homes that can connect to a sewer system, so that might be under ten thousand dollars (\$10,000) so that is why ten thousand dollars (\$10,000) is the max of eligible tax credits.

Councilmember Yukimura: Your map is fairly...it is hard to see all of the dimensions or the locations, but it looks like there are a cluster of cesspools in Kapa'a Town and there is a sewer in Kapa'a Town. Does it mean that these are the ones who just have chosen not to hook up?

Ms. Pruder: Yes. Maybe there is not a sewer line in the area for connection. I know they do provide a line, but not to all of the communities in the area.

Councilmember Yukimura: That would be a place where the County could really play a role if there are just very short connections that are needed if we created them, and I see the Head of our Wastewater Division nodding his head, so



maybe we can have Mr. Tschupp come up at some point, because that would be the way to dovetail our efforts and our resources to get people out of the cesspool situation. This tax credit does not last for a long time.

Ms. Pruder: It is only for five (5) years.

Councilmember Yukimura: Okay.

Ms. Pruder: It ends in 2020. Who knows, after 2020 if it is successful, and we can show progress in how it did clean up the waters, they may propose another bill after 2020.

Councilmember Yukimura: I just wanted to verify because you said cesspools are the leading cause of what?

Ms. Pruder: They are the leading cause of pollution. For us, it is like pollution into surface waters and groundwater, especially in Hawai'i. A lot of people do not know that, but we have actually on the outer islands...outer islands do not have the same kind of infrastructure that we have on O'ahu, so majority of the residents are actually served by on-sight systems cesspools and not like a county sewer system.

Councilmember Yukimura: There has been great concern from Surfrider and other groups about the quality of the water in Nāwiliwili and Hanamā'ulu, which some people remember as very clean waters long ago. Some of the causes of that pollution could be cesspools that are within two hundred feet (200') or more.

Ms. Pruder: Yes. Actually, it could be cesspools that are located as far as seven hundred fifty feet (750') from the stream. Those are all potential sources of pollution, as well as I am not sure if they have livestock. It is kind of common to have piggeries along those areas, so when you have farms, those also contribute to the nonpoint source pollution in the stream. If you have cesspools on O'ahu, I am not sure if you are aware, but Kahalu'u has been on the news where our Clean Water Branch posted "Keep Out of the Water" warning signs to keep out of the water because there were high indications of human bacteria in the water. One of the sources that they were looking at and identifying is the cesspools that are located along Kahalu'u Stream. If you have areas where there are cesspools that are next to a stream, you are finding that the stream is polluted and that cesspools are probably one of the sources that are causing the contamination of your waters.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Good morning. Thank you for the information. I was looking at the map and it does not really identify the names of the towns. I happen to live in Wailua Homesteads and it looks like everything back in there is eligible for a tax credit. So it is not whether you live next to a stream, it is how fast the effluent travels to the water system below the cesspool. Is that part of the criteria?

Ms. Pruder: Actually, it was two hundred feet (200') from a stream or an ocean, or even if it was within a source water protection area. I do

not have numbers, but we can probably find out and identify how many cesspools would be in your district.

Councilmember Hooser: It says a qualified cesspool is within a water source assessment program area.

Ms. Pruder: Yes.

Councilmember Hooser: In parenthesis, it says "two (2) year time travel from a cesspool to a public drinking water source."

Ms. Pruder: Yes, from a drinking water source, so that is a swap.

Councilmember Hooser: So it must be those inland areas.

Ms. Pruder: Those could be within a swap, yes.

Councilmember Hooser: Okay. The question of how do I apply, it says "waiting for rules to be developed." Does that mean a homeowner has to wait for the rules to make the change? Can a homeowner go out and put in a septic system now, and then wait for the rules to apply for the credit?

Ms. Pruder: They actually have to wait for the rules to be promulgated.

Councilmember Hooser: Before they actually get it?

Ms. Pruder: Yes, because what we will probably be doing in parallel is develop the program of how they can apply and even before the rules are signed, we will be informing residents that this is how they can apply for the tax credit. We are not going to start implementing it until the rules are signed by the Governor.

Councilmember Hooser: In order to qualify for the tax credit, the homeowners should wait until the rules are done before they convert from a cesspool to a septic system.

Ms. Pruder: Yes.

Councilmember Hooser: Is this only for conversions and not for new construction?

Ms. Pruder: This is for...

Councilmember Hooser: New construction is required already, right?

Ms. Pruder: Yes. On Kaua'i, you do not allow the construction of new cesspools here. This was only for conversions.

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: Actually, Councilmember Yukimura and Councilmember Hooser's questions clarified the two (2) points for me. The only other thing was of the thirteen thousand five hundred (13,500) on Kaua'i, only one thousand five hundred (1,500) would be eligible because their near drinking water source within two hundred feet (200') of shoreline, wetland, or perennial stream; will you be contacting those one thousand five hundred (1,500)? Is it primarily homeowners? The credit starts January 1, 2016 for five (5) years.

Ms. Pruder: Yes. What we will probably be doing is...I do not think we can notify the...

Councilmember Kualii: Will somebody be notifying them?

Ms. Pruder: Well, we are going to try and get the word out and that is why we are conducting these public meetings to let them know to contact our office because it is going to be hard for us to send out six thousand (6,000)...

Councilmember Kualii: Do we know who they are?

Ms. Pruder: We actually have tax map keys because their maps are actually based on the tax map keys that we...

Councilmember Kualii: So will you be asking the counties to do it in any particular way and do you have any suggestions?

Ms. Pruder: For what?

Councilmember Kualii: Of notifying these one thousand five hundred (1,500).

Ms. Pruder: Well, we are probably going to post the information on our website. It will be easy access for them to see if they can search for their tax map key. The thing is that they may be eligible. They would still have to hire a...if it is located within two hundred feet (200') of stream, ocean, or wetland, they still have to hire an engineer. But the ones that are located within the swap, the drinking water source, those we would certify on.

Councilmember Kualii: I may be speaking out of turn, but maybe you could ask the counties to do a notification as a part of the Real Property Tax mailing anyway that already goes out or some other...maybe trash collection. If it is going out to homeowners and we want them to have this information, you can only reach so many people with a television show, radio ad, or what have you, but if you mail to the one thousand five hundred (1,500) you know that they are all getting it. It might be a thing to do.

Ms. Pruder: We would have to do six thousand eight hundred (6,800).

Councilmember Kualii: Okay. Thank you.

Ms. Pruder: We did not get funding from the Legislature to support this.

Councilmember Kualii: But you have the information?

Ms. Pruder: We have the information. What we will probably do is notify the media and post it in the newspaper.

Councilmember Kualii: I will follow-up and I will try to make that request with Real Property Tax and Solid Waste. I do not know what is possible, but the people need to have the information.

Council Chair Rapozo: Councilmember Kaneshiro, you have the floor next, but before that, I just have a follow-up. Is the holdup for notifying these eligible cesspool owners the funding for sending out six thousand (6,000) notices? Is that is what the State is concerned about? How much is a postcard stamp? Please do not take this personal because I know it is not you, it is the State, but I get this stuff from our legislators all the time of all the accomplishments they have done in my district. They send them to all the voters. If that is the holdup, then I guess we probably should send a letter to the State and say, "Hey, wake up. Six thousand (6,000) people do not watch this show, six thousand (6,000) people do not read The Garden Island, and six thousand (6,000) people do not listen to the specific radio station at the time." I guess my point is, and we will send this across to your boss, that I think the State can afford six thousand (6,000) postcards with a twenty cents (\$0.20) stamp saying, "You are qualified for this program. Please contact the office for more information." To me, that would be logical. Councilmember Kaneshiro.

Councilmember Kaneshiro: I had a question. I heard that you have it broken down by tax map key. Is there any way that people like us could access to see...I think when we look at this map, it is hard to tell exactly if your house would be eligible or even has a cesspool. Is there a website or something that someone could go on, type in their tax map key, and see if they have a dot on them as far as being able to do a conversion?

Ms. Pruder: Yes. We are probably going to put that on later when it gets closer to us promulgating the rules.

Councilmember Kaneshiro: But it is not up yet?

Ms. Pruder: No, it is not up yet.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you for your presentation. I am just alarmed of the volume of Kauai's numbers. Senator Kouchi leads by far the number of qualifying cesspools, representing the whole island...Councilmember Yukimura, what are you saying?

Councilmember Yukimura: You are talking about Senator Kouchi's district, right?

Councilmember Kagawa: Yes, so it is his district of Kauai. By far, we lead with the number of qualifying cesspools with one thousand four hundred ninety-seven (1,497). The next closest looks like Lorraine Inouye's district in Hilo with one thousand one hundred (1,100). So the estimate is that it will cost about twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) to change from your cesspool, and then you will get a ten thousand dollar (\$10,000) credit.

Ms. Pruder:

Yes.

Councilmember Kagawa: Of course, another benefit is that you will not contaminate the environment, stream, or what have you next to you, but what is another incentive? Still, the people are looking at the out-of-pocket costs while the times are tough, twenty thousand dollars (\$20,000) to thirty thousand dollars (\$30,000) with no tax credit. Will it be mandatory at some point so people should bite the hook now because it will be made mandatory? What is another incentive of why people of Kaua'i should seriously try and save up to take advantage of this tax credit?

Ms. Pruder: Well, like I mentioned earlier, we did look at requiring cesspools to be upgraded upon point of sale, but that was pulled back. I cannot say like after 2020 or even what is going to happen next year or two (2) to three (3) years, there is always that possibility that the Department of Health can come back and look at the rules and say, "Okay, what can we do to mandatorily get these homeowners to upgrade their cesspools?" Right now, we are not requiring it. It is not mandatory. In Rhode Island, I think it was in 2006, they did a mandatory upgrade of all cesspools that were located within two hundred feet (200') from a shoreline perennial stream. That was mandated in Rhode Island where they gave homeowners seven (7) years to upgrade. Right now, our position is not to do mandatory upgrade, but I cannot really say what the future holds. It may or it may not.

Councilmember Kagawa: I am just thinking that as we try to announce to the people of Kaua'i that we have this ten thousand dollar (\$10,000) tax credit that is going to be available soon, that you have to have something else like an incentive, because it is still going to cost out-of-pocket a large sum of money.

Ms. Pruder:

That is true.

Councilmember Kagawa: If their cesspool is functioning fine, I am very concerned that if the incentive is not there coming from the State representatives or your branch, they will not take it. If their cesspool is functioning fine and times are tough, how are they going to come up with ten thousand dollars (\$10,000) to twenty thousand dollars (\$20,000) when their cesspool is functioning fine? That is a problem and we have to try and find some incentive. Another consideration is if the State can further lift the tax credit to a higher amount. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: In terms of notifying the six thousand eight hundred (6,800) people, is it possible that you could give the tax map key information to our Real Property Tax Division and when they send out notices, they can insert something in the regular notices that we send out?

Ms. Pruder: We can do that if they are willing to do that. We could actually provide a flyer for those eligible cesspools.

Councilmember Yukimura: That might be a way to use intergovernmental cooperation to share some of the costs. Hopefully, if you structure your flyer well, it will not add to the cost because of the weight. Thank you.

Council Chair Rapozo: Thank you. Questions? Councilmember Kagawa.

Councilmember Kagawa: To a layperson like me, I do not know much about what goes into converting a cesspool into a septic tank. So it requires covering the existing cesspool and digging up another big hole to install septic tanks. Is that what it entails or can you use the same hole and maybe expand the hole?

Ms. Pruder: For us, we probably would not allow that, especially if that cesspool is discharging direct...if it is two hundred feet (200') from a stream or from a water body, it is discharging into the groundwater and it is impacting the State water. What we would do is require banning the cesspool, filling it up. For the construction of a septic tank, you would have to excavate a big enough area to put in your septic tank, which is usually one thousand (1,000) gallons or one thousand two hundred fifty (1,250) gallon tank. Then they would have to construct a leach field on the property. The leach field is actually what provides ninety percent (90%) of the treatment of the wastewater to the soils because there are bacteria in the soils that actually helps eat up the pathogens. The soil also filters the wastewater, so usually there is little to no impact to groundwater. Based on our rules, you need at least three (3) feet between the bottom of the leach field to groundwater. That minimizes the impact of contaminating your groundwater sources.

Councilmember Kagawa: Thank you. So the size of the area that you will need for a septic system compared to a cesspool is a much larger area.

Ms. Pruder: Yes, it is much larger.

Councilmember Kagawa: How much larger? Five (5) times?

Ms. Pruder: I would say that it depends on your soil type. If you have a good percolating soil, then you...it is the leach field that takes up your...that would probably be put into your lawn area, but it depends on the soil. If your soil is a fast, rapid percolated one, your leach field is smaller. If you have clay where it is hard to percolate, then your field would be bigger.

Councilmember Kagawa: I have one last question. Your twenty thousand dollar (\$20,000) to thirty thousand dollar (\$30,000) estimate includes covering the cesspool, so it would include covering the cesspool and installing the new septic?

Ms. Pruder: Yes.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Councilmember Chock.

Councilmember Chock: Sina, it seems to me that the low-hanging fruit would be to identify the cesspool properties that are most impacted or impactful that can transition to sewer lines or sewer areas. Do you have a list of those?

Ms. Pruder: I can develop the list and provide it to you.

Councilmember Chock: Ten thousand dollars (\$10,000) would pretty much cover that cost.

Ms. Pruder: For them to connect?

Councilmember Chock: Yes.

Ms. Pruder: That would cover that.

Councilmember Chock: That to me is a no-brainer. People would be more willing to do that at this point.

Ms. Pruder: Yes.

Councilmember Chock: That would be good to get a copy of those.

Ms. Pruder: Okay.

Councilmember Chock: Thank you.

Council Chair Rapozo: I have a question. Councilmember Chock earlier talked about the EPA assistance or grants that they are giving to the Hanalei Watershed. Are you aware of that? Is there any communication between the Feds and the State as to if they are qualifying...I do not know what the grant is at Hanalei Watershed...let us say ten thousand dollars (\$10,000)...are they able to enjoy both, so they will get the ten thousand dollar (\$10,000) cash and then get a ten thousand dollar (\$10,000) tax credit? Is that something that you discussed?

Ms. Pruder: I have not heard of that EPA grant, so I am not sure which area in EPA provided the grant. I would have to go back and check and see how they applied for that grant. It may have not been with people that work with our project officers from EPA. For rural waters, if you have an association, I believe they provide grants for wastewater infrastructure, but they said that if they do not provide it to individual homeowners, it has to be through an association. I know they also provide grants.

Council Chair Rapozo: I am assuming that the Feds give the money to the Watershed organization and they will administer the grants to the individual homeowners, but I was just wondering if there is some sort of check and balance. As nice as it is to have one (1) homeowner get a ten thousand dollar (\$10,000) and a ten thousand dollar (\$10,000) tax exemption, I would like to see everybody get a ten thousand dollar (\$10,000) break. Basically, your tax exemptions would be sent out to people that actually need it and somebody is not...I will not say double-dipping, but somebody is going to get a twenty thousand dollar (\$20,000) break and somebody is going to get ten thousand dollars (\$10,000). I am not sure how we can connect the two (2) agencies, but that is something that I would suggest just to keep it fair and get more people the help. That is pretty much all I have. I did run the numbers real quick, but as far as the postage Statewide it would be two thousand one hundred dollars (\$2,100) and for Kaua'i it would be five hundred twenty-five dollars (\$525) to mail out a postcard.

Ms. Pruder: Did you count the labor? Who is going to do the printing? That is something that I would go back and check because I already know that they are going to come back to our office and we would have to look at how we are going to fund it.

Council Chair Rapozo: I can draft a postcard for you. I could do that for free. I think it is just real simple. My point is that I think we, here on the Council, we had a notification from Senator Kouchi letting us know that you were going to be able to come here. If not for that, I would not have known about the program. That means that the public probably does not know about the program.

Ms. Pruder: They might if they watched your show.

Council Chair Rapozo: I do not think that many people...they already changed the channel after this morning. They are watching Dr. Phil right now.

Ms. Pruder: We will look at your suggestion. I will go back and see what we can do to notify the six thousand eight hundred (6,800) people.

Council Chair Rapozo: Yes, I think the cost is well worth it because you want to get this benefit into the hands of the people. We do not want to go into next year's tax season and say of the five million eight hundred thousand dollars (\$5,800,000), only one million two hundred thousand dollars (\$1,200,000) in tax credit were given because most people had no idea that it was even available. That is all I am saying. I want to give the five million dollars (\$5,000,000) of tax credits so we can get these conversions done since it is the best thing for the environment. With that, any other questions? If not, thank you very much.

Ms. Pruder: Thank you.

Council Chair Rapozo: I think you will make your flight. Hamura Saimin is still open, so you can catch that before you go home. Anyone in the audience wishing to testify?

Ms. Fountain-Tanigawa: We have one (1) registered speaker, Matthew Bernabe.

Council Chair Rapozo: Okay. Rules are still suspended.

Mr. Bernabe: Matt Bernabe for the record. I would like to start by saying that those six thousand (6,000) people can just get an E-mail one time, mass sent, bang, and the ones that do not can get a letter since not everybody is on E-mail. I am all for this tax credit, but the topic of converting cesspools to septic, I am a little bit on the fence. On one point, I am all for it, especially if it is an old cesspool that has either no lid, the wall is collapsing, or if it is near riparian or shoreline waters and stuff like that. Obviously, that is a no-brainer. The part that I have is a slippery slope of converting all. That is where you start to go, "When am I going to have to take my fully functional eighteen feet (18')," because when my in-laws built the house, there was an extended family so they put a larger cesspool in. So I have an eighteen feet (18') deep one. My friends that have put houses in recently and had to put septic with the leach field, the kids have no yard and there is a foul smell. I always question if there is a mechanism to leach it to the



grass, how can this be better than my citrus trees up taking it from deep roots? I may not have the science correct. I am not sure. I know when I go to the soccer field by Lydgate, it stinks. Maybe that is a different subject. There is going to be the low-hanging fruit like Councilmember Chock stated; the ones that are right by the water and the ones you can see with no lid, collapsing walls, and you put the dye in and it comes out. I will definitely keep my thoughts open because like I said, I am on the fence. I understand that it is a severe problem, but if I had to do this and bury my hole, I have a Condominium Property Regime (CPR) lot, so I do not have anywhere to go with a septic and a leach. That means I would have to spend probably sixty thousand dollars (\$60,000) because that thirty thousand dollars (\$30,000) is not going to be able to pull out my trees. I have my bay leaf tree, calamansi tree, and all these trees that are surrounding my cesspools. It takes big dollars to remove that. I have my farm and everything. It is a big endeavor. I see that I am running out of time and I will come back, unless there is anybody that wants to speak, I will stay, depending on the Chair, but if I had to do this, I can guarantee that it would not be thirty thousand dollars (\$30,000). It would probably be more for my particular lot and I do not even have the land to go for this. I see I am going to run out of time.

Council Chair Rapozo:  
matter?

Anybody else wishing to testify on this

ANNETTE ODA: My name is Annette Oda. Just a thought, but I like what our Councilmembers have presented and throughout the thoughts, but also piggybacking on what you said, I think we should look at this as more like a broader picture because if the intent is to eventually get rid of cesspools because of whatever the negatives are, then maybe the incentives need to be on a broader scale because we have other problems that are going to interfere with just those six thousand (6,000) people. There are going to be things like shoreline setbacks and even worse with the drought and all of these other global warming things. Really, I think we should not be just tunnel vision and think about what is happening here and now, but also look at it on a broader scale. If the purpose or objective is that important, we need to open our eyes, look at the whole picture, and say, "Okay, this is just a band-aid approach for the ten thousand dollars (\$10,000) and stuff, but we need to look at the island as a whole and start making plans so that it could help the people of the island that are residents, especially the long-term residents. I am really worried about the seniors. As you know, they are on a set income and they need to be getting some kind of help from the island after all these years of being here. They did not expect this kind of a huge bill in their golden years. Just a thought. Thank you.

Council Chair Rapozo:

Thank you.

MICHAEL ODA: My name is Michael Oda. This is pertaining to the installation of the septic tanks. I believe there are more than just septic tanks that you should do. What can enhance the ability for the filtration for the environment to be utilized to help clean the water that is released into the environment? There are many ways of doing that, rather than saying we will just use septic tanks and that is sufficient because we have groundwater problems. There are plants and things that can help or enhance the environment to actually help to clean the environment. If you do not look into those areas, because you are the officials and you can help people with ideas, and some of them is to get into science, you need science because our whole universe is based on science laws. You need to find organisms and things, whether they are the tiniest and they expanded

to the largest, however, and find that you can also educate the public to help clean the water. Thank you.

Council Chair Rapozo:

Thank you. Anyone else?

Mr. Mickens: For the record, Glenn Mickens. From what the young lady said in her presentation, this program is not mandatory. I do not think anybody, as Ross has pointed out, is going to spend twenty thousand dollars (\$20,000) or more out of their own pocket to change a cesspool to a septic system if it is going to cost them that kind of money. Are we being premature? Unless they are mandating that the people convert their cesspool to a septic system, then I think you are going to hear a lot of people complaining big time, but there are so many variables here. Again, without it being a mandatory thing, I cannot think of anybody...my house was built twenty-six (26) years ago and the cesspool was okay. I guess it is mandated and you have to have a septic system in, which is fine or if they are close to the ocean or close to a stream or something. Again, I would say that they are going to have to mandate that they are going upgrade these systems in those particular areas, but to say that everybody is going to have to mandate it to put the septic system in, I think something is going to have to change there. Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to testify for the first time? Second time? Mr. Bernabe, and then Ms. Oda.

Mr. Bernabe: Matt Bernabe for the record. As I was pointing out earlier, one of my neighbors came in and he had a vacant lot and on this vacant lot there were three (3) beautiful fruit producing mangos of high quality and when he put his house in, he had to put septic, not cesspool, and he had to create the leach field. Because of that size, he had to remove the trees, cutting them all back, and then literally pulling the stomp out. I remember the stomp sitting a long time while he waited for the vehicle to come get it. That all cost extra money, and not only did it cost extra money, but the very thing that we are trying to protect, this water protection, as soon as the big flood came, I noticed that immediately after removing those trees, the (inaudible) of water now was greater in our area. He was slightly above me on the grade. I have been in my house for a long time, so I have had a timeline to watch what happened and he had to remove the trees to put his septic in. It was not his fault. It is not like he wanted to. He did not even want to remove his mangos, but he had to. I am not going to sit here and say that I want cesspools for everybody, but what I am saying is that for some of us who have established cesspools, you might as well just condemn the whole house because by the time you dig that hole up, my particular lot would be hard. I will tell you that right now. You might as well just shut the lot down and take the house away because it is CPR, so there are two (2) houses on a lot that is meant for one. On the other side, I am all for water protection, so this is a hard issue. I will be following it. I am all for the tax credits, which this is what this issue is. I am for the tax credits. But when we talk about this subject, let us get realistic because these numbers here says there are only one thousand five hundred (1,500) available, but the blue dots seem to outnumber the yellow dots that say is not eligible. That does not even look right. If we are talking about water protection, we should be talking about looking at the State and the Feds to get us a sewer system to put in these regions. Look at this big cluster in the Homesteads, why do we not get a sewer system in there? Instead of giving the task to each individual to convert over, let us do the holistic approach like how the lady was talking about to get State funds, Federal funds, and County funds to start the bidding project on how to make

a real sewer system up in that area. I do not have the answer today. I will definitely be following this issue and I look forward to dialogue in the future. Thank you.

Council Chair Rapozo:

Thank you. Ms. Oda.

Ms. Oda: This is Annette Oda. Thank you, Matt. We are thinking alike. That is kind of scary. That is exactly what I was going to say. First of all, the incentive by the Department of Health is excellent. It is just a band-aid approach, but we need something soon. I would not want to wait until it has to be mandatory, so it is out of the question. It has to be done and great, the Department of Health is putting the first step forward, but I was also thinking like Mr. Bernabe that a sewer system...what about a sewer system that is for everybody on the island. Is that a possibility? If it is, great because I overheard the speaker from the Department of Health and she had said something about to just connect to the sewer system would be quite a bit less, something like ten thousand dollars (\$10,000) would cover it all. Why not? Let us help the people of Kaua'i and work together. The sewer system by the County would be great because you are able to get State funds, Federal funds, and maybe even EPA funds, or whatever. The thing is that you are in that position where you can help everybody instead of just a few. Thank you.

Council Chair Rapozo:

Thank you.

Mr. Rosa: Good morning again. I am hearing all this talk about "the people," but what about our County? Where are you going to put all of these sewer plants? The Lihu'e one is over capacity. Wailua and Lydgate Beach Park is in a tsunami prone area. The County needs the money first to put up the plants, and then from the plants you hook up to the residents. To me, it is a County problem first. Where are you going to enlarge the Lihu'e sewer plant that is on Marriott property? Lydgate Beach Park is in a tsunami area. The pump station is in a tsunami area. You need to think about the County first and the plants to process all of the raw sewer. Think about the County financing. I do not know how many millions of dollars it takes to put up a plant and you cannot make a small one hundred (100,000) gallons. You have to go a one million (1,000,000) gallon plant or something based on population, especially in the Kapa'a-Wailua area. You have to think about one million (1,000,000) gallons like what Princeville did. When they started out, they said everything was one million (1,000,000) gallon water tank and one million gallon (1,000,000) sewer plant. They went big time. Over here is a small little scratch here and scratch there. When you put it in, you say like it was mandatory in Isenberg Tract in 1984. The County put it in and they sent you threatening letters. If you do not hook up, they were going to condemn your property. You had no choice and you hooked up. That is how long we have been on sewer in Lihu'e; thirty (30) plus years already. We have been paying from a measly forty-five dollars (\$45) to one hundred twenty dollars (\$120) every two (2) months. Thank you.

Council Chair Rapozo:

Thank you.

ALICE PARKER: Alice Parker for the record. I apologize for my untimeliness, so I do not know what has gone on before, but the more people we have, the more stuff goes into the ground and we definitely need to get rid of cesspools. If we have funding to help us do that then terrific, go for it. Cesspools belong maybe on way outlying islands that we never heard of, but we are a major

island and we need clean garbage, clean (inaudible), and stuff like that. We do not need that kind of stuff to get into our waters or into our groundwater anywhere. We need to dispose of it properly. Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to testify for the first time? Second time? If not, I will call the meeting back to order. Further discussion? Councilmember Kagawa.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Thank you. The best incentive for reducing this lowest hanging fruit of about one thousand five hundred (1,500) cesspools that are near two hundred feet (200') within the perennial streams, wetlands, or ocean is to have a sewer line hook up. We all went through that for those of us who have lived here from way back in the 70's and 80's where we were mandated. In Hanapēpē Heights, we were required to hook up. It was mandatory. There were no ifs, ands, or buts. It said, "Hook up by this date." In order to expand our sewer system is obviously is going to take a whole lot of money. It can be done. Of course. There is room out there. But to get the money to do it is going to be the challenge. This is a State incentive program, but is ten thousand dollars (\$10,000) incentive enough for the public when their cesspool is functioning fine? Everybody loves the environment, but when it comes down to doing what you were asked to do, it is going to come down to finances and how much money people have. Ten thousand dollars (\$10,000) to twenty thousand dollars (\$20,000) for a lot of people is more than a year's worth of savings and stuff. My only solution to get the most incentive is to have a long-term, big picture, like Matt and Annette said, is to expand our sewer system. A big start to that would be if the State could restore our Transient Accommodations Tax (TAT) as it was five (5) years ago. We are losing out twelve million dollars (\$12,000,000) to thirteen million dollars (\$13,000,000) per year when they capped it. The State here is mandating...a lot of things we work together with the State and County, and the State is saying that we have to tackle this problem, but they need to the County to do our share in order to incentivize the public. This is our last year, I believe, this next Legislative Session. I think it is do or die for this County to get back our share of the TAT. I will do everything in my power. I hope the public does everything in their power because I think if we really want to fix this type of problem, we are going to need the State's funding back to the County and the TAT will help us to accomplish expanding the sewer system. I want to thank the State Department of Health for putting forth this program to tackle this problem. I think none of us want our children, relatives, or family to swim in urine and fecal matter. It is really disgusting. Sewer systems are expensive, but it is one that we definitely cannot ignore. Thank you, Chair.

Council Chair Rapozo: Thank you, Councilmember Kagawa.  
Councilmember Chock.

Councilmember Chock: Thank you, Chair. I am really thankful for the State Department of Health for this presentation. I think it is an example of how government funds do not get used because I do not know anybody who has ten thousand dollars (\$10,000) to twenty thousand dollars (\$20,000) lying around in their house in order to make this kind of transition. I think there are two (2) things that need to happen: one avenue is that we work with our County Department of Water sources to update where we can effectively get our sewer systems established in order to take advantage of these funds. Councilmember Kualii and I were at the

joint Water Conference yesterday and had a presentation where United States Department of Agriculture (USDA) funds are not being utilized in this State. There are tons of money not being utilized for infrastructure and maintenance, and all of Kaua'i is eligible for it. That is where we have to look first. We have to develop those opportunities, especially for the most susceptible regions. The second opportunity is that we have to establish better watershed management systems and that usually is what we have seen come from our non-profit organizations like the Hanalei Watershed Hui. We need those in every community because they are also eligible for these funds. As I have stated earlier, the EPA funds that were established are for the homes along Hanalei Bay. There are about thirty (30) homes that they are targeting at fifteen thousand dollars (\$15,000) for the transition. We should be able to access those funds in every community. I am hoping that we get a little bit more serious about how that happens and supporting these non-profit organizations to get established. I think I will be following this issue more closely, as I think water is really important to our future. Thank you.

Council Chair Rapozo: Thank you, Councilmember Chock. Anyone else? Councilmember Yukimura.

Councilmember Yukimura: As someone who remembers from the 60's and 70's when the goal was to sewer the whole island, that is not possible anymore because Federal funds are not available, just like highway funds. They are not available to the extent that we can put sewers everywhere. What that means is that we have to use land use powers to cluster our growth so that there are the economies of scale to make sewers possible, and that means higher density than single-family sprawl because it is really expensive per house to sewer single-family areas. The way to do it is, for a lot of things, for more compact higher density growth. It does not mean higher density like Honolulu, but it means higher density like Rice Camp, Kalepa, and that type of multi-family housing, and not leapfrogging from one place of the island to the other where there are huge spaces in between. That is why our General Plan talks for growth around our existing towns. I do believe that for existing growth that is already in existence like in Hanalei or along Nāwiliwili Valley, or along the Hanamā'ulu watershed, these special EPA grants to put houses on septic tanks would be the way to go and I think a concerted effort along those watersheds would be very, very important and high priority for protecting our water quality, not only our drinking water, which is the most important, but also the surface waters like Hanamā'ulu Bay and Nāwiliwili. I think it takes really careful land use planning to do.

Council Chair Rapozo: Thank you. Any other discussion? Councilmember Kualii.

Councilmember Kualii: I will not repeat, but I will just say that I totally echo the comments but Vice Chair Kagawa and Councilmember Chock. The only other thing I would add is that funding is always an issue, but focusing on getting back to the basics and prioritizing what our citizens need most and those are the tough decisions that this Council and the Administration have to make every budget year and I do see something such as the sewer lines as part of the basics and what we should try our best to prioritize and focus on when it comes to budgeting, much in the same way we do for public safety and roads. Thank you.

Council Chair Rapozo: Thank you. Any other discussion? If not, I want to thank the State for being here today and at least having a dialogue. They are in the process of creating the rules, which will need to be done before we can

even apply for this program. I just want to repeat that the community meeting for Kaua'i will be on Wednesday, August 12, which is next Wednesday, at the District Health Office on Umi Street, which is right between the old police station and Central Pacific Bank building. That is an opportunity for the public to go and voice their concerns and what they want to see. The only other thing is I think using the cost or resource to not notify the public is a weak one and I think that if the State is sincere is wanting to get this out to the people, then they should be funding the two thousand dollars (\$2,000) or so dollars to get this message out to every single owner that qualifies. I just think that to have a program and not inform the people that they are eligible—you are not going to get a response. You just will not. I am encouraging the State to go ahead and move forward on at least notifying that once the rules are in place, we can notify the people so that they can apply. Obviously, I agree with all that has been said here today. With that, the motion is to receive.

The motion to receive C 2015-216 for the record was then put, and unanimously carried.

Council Chair Rapozo: Thank you. Next item, please.

C 2015-209 Communication (07/13/2015) from the Director of Finance, requesting Council approval, to accept and expend the appropriations provided to the County of Kaua'i in the General Appropriations Act of 2015 – Act 119, SLH 2015 in the amount of \$7,100,000 from the State of Hawai'i for the following:

- Capital Projects – Appropriation Warrant No. 223
  - Motorola 800 MHZ Upgrade – Phase III – \$2,100,000
  - Sheltered Bus Stops – Construction – \$1,500,000
  - Moloa'a Well & Post Harvest Facility – \$3,050,000 (Pass through funding from the State to the Moloa'a Irrigation Cooperative)
  - Kaua'i Veteran's Cemetery Renovation – \$400,000; and
- General Funds – Appropriation Warrant No. 60
  - Office of the Prosecuting Attorney Career Criminal Prosecution Unit & Victim Witness Assistance Program – \$50,000

Councilmember Chock moved to approve C 2015-209, seconded by Councilmember Yukimura.

Council Chair Rapozo: I know the Administration is here and I am assuming it is for this. Do we have any specific questions for the Motorola 800 MHZ Upgrade? Do we have any questions of the Administration for the Sheltered Bus Stops? Do we have any questions for the Moloa'a Well and Post Harvest Facility? I have a question for that. I am assuming that would be Finance. Are there any questions for the Kaua'i Veteran's Cemetery Renovation? You have one for the Cemetery Renovation, okay. So anybody here from the Administration that do not fall into the Cemetery Renovation and Moloa'a Well and Post Harvest Facility can leave. I just do not want to keep you here. You are all highly paid people and I

want to get you back to work. With that, is there anyone here wishing to testify on this? This is money from the State that is coming over to the County. With no objections, I will suspend the rules.

There being no objections, the rules were suspended.

Ms. Parker: Alice Parker for the record. Yes, they need more money. Give them all the money that they need. They do a great job. Thank you.

Council Chair Rapozo: Thank you. Mr. Bernabe.

Mr. Bernabe: Matt Bernabe for the record. My question would be addressed to the Moloa'a Well. I will probably have to listen to them, but I am curious because I work on this road, Ko'olau Road, and I have an aunt who lives on the north half and she gets County water; whereas my boss and her subsequent neighbors all had to put in their own wells. So I know for a fact that the water table is going down because it correlates to their electric bill. My question would be, "Is this an existing well or are they planning on putting any well? If it is an existing well, are they trying to get more properties to use out of this well or is it specific for some specific reason?" I am curious because those lots that I work on were refused water and had to dig their own wells. Because they put so many in a small proximity, they reduced the pressure and their percolation keeps going down. That is why it correlates to their electric bill. The deeper it goes, the more electricity it takes to draw out. I am concerned. Is this a new well? Obviously, I am going to have to listen to the report. I do not know. I just saw it on here. I am really concerned with what this is about. Thank you.

Council Chair Rapozo: Thank you. It is 11:10 a.m. and we have to take a caption break. The Administration is here for that. I will say that that specific allocation of funds was not requested by the County. Those funds are basically a pass through to the Moloa'a Irrigation Cooperative (MIG), so they have requested through the Department of Agriculture and the State has made those funds available. They are using the County as a pass through, so I am not sure anyone here is able to answer that specific question on the technical aspect of what the funds are going to be used for, but I do have a question as far as the pass through and the facilitation. I will ask Finance that question as soon as we get back from our caption break. With that, we will take ten (10) minutes.

There being no objections, the meeting was recessed at 11:10 a.m.

The meeting reconvened at 11:19 a.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order. I guess the only question was of the Moloa'a Well and Post Harvest Facility. Ken, can you come up please? I just had a question as far as how we are handling the facilitation or the pass through. As I stated a little while ago, the funds were requested by a private entity or a cooperative through the Department of Agriculture. It went to the Legislature and got the three million fifty thousand dollars (\$3,050,000). I understand that we are going to facilitate the payment of those funds.

KEN M. SHIMONISHI, Director of Finance: Ken Shimonishi, Director of Finance. That is correct. We have an application that we obtain from the Moloa'a Irrigation Cooperative. You are correct that this was request made directly

by them to our State Legislature for the purposes of their storage tank, water lines, making the water potable, and also design on a food storage hub area. Again, this is something that they made directly to the Legislature. It will pass through the County of Kaua'i. They are required to provide us with quarterly reports on the funds and the drawdowns. I am not aware right now of any actual requirements before we release the funds, assuming that the Council approves the acceptance. The Mayor then sends the communication to the Governor to get the release of funds, but aside from that, I am not aware of any additional requirements. An example was the Philippine Cultural Center, where there was a matching requirement from that organization to be established before we would release the funds. I think when we get that from the State, we will know if there are any additional requirements on that.

Council Chair Rapozo: Why would the funding not come directly from the State to the Moloka'a Irrigation Cooperative?

Mr. Shimonishi: Good question. I think it is cleaner to keep us out of it, but I think that is the way they try to get some kind of control on to pass the money through the County.

Council Chair Rapozo: Yes, pass the money through the County so that the County can manage the grant. Do we get a percentage or an administrative fee from the State?

Mr. Shimonishi: No, we do not.

Council Chair Rapozo: Can we get an administrative fee from the State?

Mr. Shimonishi: We would have to research that.

Council Chair Rapozo: I have a problem that we are going to do all the work and your resources do not get replenished. It is not that simple to manage the quarterly reports and make sure they are in compliance. We do not know what...we are just going to write a check. Anyway, that is a question that I have. I am not sure if this is time sensitive or not, but I definitely have a concern with that. I see Councilmember Yukimura and Councilmember Hooser raising their hand. I am going to go with Councilmember Hooser first because he is a former senator and maybe he can enlighten us on how this happens. I do not know.

Councilmember Hooser: I would be happy to. It is my experience that the funds either go through a state agency or go through the County. Somebody has to facilitate getting them to the entity. I think you could look at it as this is a partnership where the County is helping to facilitate agricultural...the State is putting up the money...that is a lot of money and we should be very thankful for that, and the County is helping by helping to facilitate that. So that is how I would prefer to look at it, as a partnership. I understand that it takes County resources to do that facilitation, but I am very pleased and very thankful that Senate President Kouchi, the Legislature, and the Governor have all chosen to provide these funds for a very important cause. Thank you.

Council Chair Rapozo: Thank you for that explanation. I am pleased that they sent the money, too, but if there is no compliance, we do not even



know. As I am hearing from you, Ken, we do not know what is required or the quarterly report. We do not know.

Mr. Shimonishi: Unfortunately, I think that is a valid concern. We get the reports and we assume that the data is all accurate and substantiated before releasing the funds.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Is this part of fulfilling the Comprehensive Economic Development Strategy (CEDS) plan that we have for the County?

Mr. Shimonishi: I am not up to speed with that. I apologize.

Councilmember Yukimura: Do you have the application from the co-op?

Mr. Shimonishi: The application that we requested from the County because they were getting these funds to get a better idea on what the moneys are actually being used for, yes.

Councilmember Yukimura: Does that give us any background?

Mr. Shimonishi: On what the money is being used for?

Councilmember Yukimura: Yes, the application.

Mr. Shimonishi: Yes, it does. Again, one of the things is that the five hundred thousand (500,000) gallon storage tank is in need of repair. There is contamination from avian coliform. I guess it is rusted and needs to be repaired and retrofitted, and the water made potable.

Councilmember Yukimura: So it does not mention anything about this being part of achieving the Comprehensive Economic Development Strategy?

Mr. Shimonishi: Not at my glance of the application, no.

Councilmember Yukimura: Okay. Is this not, as Councilmember Hooser suggested, a joint partnership? It was my understanding that the Department of Agriculture is working with this co-op.

Mr. Shimonishi: I am not sure, other than what Council Chair mentioned.

Councilmember Yukimura: Okay. Do you know whether there is a time constraint on receiving these funds?

Mr. Shimonishi: We would probably have to look at the warrant voucher from the State, but I am assuming that as soon as we get the approval to accept and expend, the Mayor would be forwarding the request for the release of the funds to the Governor shortly thereafter.

Councilmember Yukimura: Okay. Do we have anyone here from the co-op? Nobody has asked them to be here? Okay.

Council Chair Rapozo: Anything else?

Councilmember Yukimura: No.

Council Chair Rapozo: The other question on the appropriation warrant that is showing eleven million five hundred thousand dollars (\$11,500,000) and the request is for seven million fifty thousand dollars (\$7,050,000).

Mr. Shimonishi: I believe the eleven million five hundred thousand dollars (\$11,500,000) is a summary of the Motorola project and the Kaua'i Veteran's Cemetery, as well as the Moloa'a...

Council Chair Rapozo: Yes, if I add up the Motorola, the bus stops, Moloa'a, and the Veteran's Cemetery, we come out with seven million fifty thousand dollars (\$7,050,000). I am just trying to add these numbers up. There is some in here for water lines and maybe that is the Department of Water, which is why it is not reflecting in our County. That is the only thing I could see. Water line improvements in 'Ele'ele-Hanapēpē—that comes out to a substantial four million dollars (\$4,000,000) plus, so that would probably explain that. Okay. Thanks, Ken. I do not have a problem with the co-op asking for the money, I just wish the request would have come to the County, and then we facilitate it, but in this case, we had nothing to do with it and the State says, "Okay, we will give you the money, but County, you go manage it." Where are the resources to manage that? Where does that come from?

Mr. Shimonishi: Right. This would be passed through our grant manager, and unfortunately she handles all of our State appropriations that get made in this manner.

Council Chair Rapozo: We use non-profits as pass through for our grants and they always take a percentage, whether it is ten percent (10%), twelve percent (12%), and some is even twenty percent (20%). I do not think that is unreasonable, especially a grant of that size, unless we are just happy with writing a check and "you go spend the money how you want," because the State is not going to manage it. They are giving us that responsibility, but it is still public money. I guess we can express my concerns to Ann Wooton. I am not sure how we fix that. I do not want to say no to the money because those moneys need to be allocated and those improvements had to be made.

Mr. Shimonishi: Understood. Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Again, my position is that we should celebrate and be a willing partner and invest in helping this cause move forward, but I think if there are questions or concerns, we can invite Senator Kouchi to explain what his intent was. In terms of it being time sensitive, it is my experience that all of these are time sensitive and that they all take far too long to get funded. If roadblocks come up time after time, there is always a risk down the road of the funds lapsing or whatever, so I would say that time is of the essence. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I think this might be a really good opportunity to show intergovernmental cooperation by working with the State Department of Agriculture and really having them do the basic oversight, but working it through here. I have a feeling that this was a creative appropriation process on the part of not only Senator Kouchi, but representative Kawakami. I think his office initiated this grant and our other representatives like Dee Morikawa and Jimmy Tokioka. I think it does address one of the goals in our Comprehensive Economic Development Strategy plan, so it might be a good way to work with the Department of Agriculture to lessen the burden on the County and also work with somebody that hopefully is the one that understands this project and will hold it accountable.

Council Chair Rapozo: Any other questions? If not, thank you, Ken. Anybody else in the audience wishing to testify? Mr. Mickens.

Mr. Mickens: For the record, Glenn Mickens. Thank you. I just have a couple of questions on this communication. The bus stops for one million five hundred thousand dollars (\$1,500,000)—I see no amount. How many bus stops are we going to get for one million five hundred thousand dollars (\$1,500,000) and why would the...I guess they are not standardized. The ones up in Princeville are costing three (3), four (4), or five (5) times more than the one in Hanamā'ulu. Why is that? I do not know if you have an answer.

Council Chair Rapozo: I do not have an answer, but Councilmember Yukimura has asked for a briefing that is going to be coming up soon in a Committee. I believe I signed the request regarding an update on the bus stops.

Councilmember Yukimura: I did make a personal request. I am not sure if it was a presentation. I recall that there are forty-nine (49) bus stops that need to be built.

Mr. Mickens: Is that where the one million five hundred thousand dollars (\$1,500,000) for forty-nine (49) bus stops come in?

Councilmember Yukimura: Certainly all of part of them. They have a plan.

Mr. Mickens: Is the plan that they are all going to be the same bus stop?

Council Chair Rapozo: Glenn, we will post that for a future agenda item to get an update.

Mr. Mickens: Okay, good.

Council Chair Rapozo: I agree. That it is a lot of money.

Mr. Mickens: Yes.

Council Chair Rapozo: But today is just accepting the money.

Mr. Mickens: Like Joe keeps on pointing out, you are not putting them on just one side of the street; you are going to have to put them on the other side also. Thank you, Mel.

Council Chair Rapozo:

Ms. Parker.

Ms. Parker: Alice Parker for the record. Regarding bus shelters, we desperately need them. The reason they are not standardized is that some communities jump in and upgrade or change the bus shelter. The one in Kilauea is not standard because some non-profit groups jumped in and constructed them before the list was ready to put one there. The other thing is that the late Peter Nakamura designed a very standard, sturdy bus shelter and it was able to withstand the weather, graffiti and other constraints, and it was also wind resistant so the walls were perforated and it would not be blown down in a hurricane. That is the reason they are not standardized and where this is a lot of money, they will last a long time. We bus riders really appreciate them. Thank you.

Council Chair Rapozo:  
for the first time?

Thank you. Anyone else wishing to testify

Mr. Rosa: For the record, Joe Rosa. Are the bus stops going to be open-aired or are they going to be three (3) sided where the people can be sheltered from the wind or rain? What size is this? Three (3) feet wide and twelve (12) feet long? There are no dimensions. So that leaves a question as to expense. They should set standards for all bus stops. Let us say they will all be eight (8) feet by twelve (12) feet long or something like that. You have to have standards and come up with a plan, not, "Hey, we are going to just build forty-nine (49) bus stops." What you are going to do is you have twenty-five (25) bus stops, you put it all on bid, and a contractor can give you a better price, I think, and they will take care all on the island. Look at it that way. Put it out for bid and the contractor can give you a better price than just speculating like this here. The government, State and County, is by the bid process. To me, I keep mentioning that it is not building one (1) bus stop on one side of the street; you need them on opposite sides to drop-off and to pick-up. I hope the Transportation Committee looks into that and the bus people look into it also because it cannot be a one-way street of only a one-way pick-up or one-way drop-off. That is my input. Thank you.

Council Chair Rapozo:

Thank you. Next speaker.

Mr. Bernabe: Matt Bernabe for the record. This is shocking for three million dollars (\$3,000,000) and some change that no one showed up to this meeting. That, to me, is already a red flag if I had to just say that. I do not agree with these appropriations on the Moloa'a Well because I did not hear the man specify if this is a new well or if this is a well that we are retrofitting. Who is going to get the use of this well and what are they going to use it for? Is this for farming? I do not see too many farms there. Is this for drinking? What is this for? Why are we going to go and do all the work, like you pointed out, Chair, and then these guys reap the benefits while we do not even know what they are using them for? With the pressure on the County to safeguard our water after that Supreme Court ruling, we should deny this appropriation and point out that for over three million dollars (\$3,000,000), we could really do good work on getting our riparian water back on track. That aquafer that they tap into in Moloa'a is really Waipahe'e aquafer. I know because I work there and I know the people. I have a relative that lives on this road. She has water that comes from the County, but then all of this new development that came after 1998 or whatever, they did not give them water rights and they put in a bunch of wells. In the valley that I work in, there are about twelve (12) people in the co-op and every one of them has a well. My question still

has not been answered. Is this going to be a new well drilled? If it is, has a hydrographic study been done? I can tell you that I am not an expert, but from my observation, I know that that water table is going down. I have conversations with my boss. Her electric bill has gone up exponentially because the water is going down. What is this well for? I ask again. Why should we be giving them three million dollars (\$3,000,000) and they do not even have the respect to come here and accept it while you are talking about it on the agenda. That is a huge red flag. To me, this should be sent back and we should tell the State that we are not interested, but we are interested in your money on working on some serious sewer and water issues. This is like picking winners to me. Why does this community that has a lot more money than my community get to do this? I do not understand. Until now, nobody said if this is a new well or if this is a retrofit of a well. That should be the first sentence, to me, if you are asking for my taxpayer dollars of three million dollars (\$3,000,000). Please do not appropriate this. Send back a message that we are not going to just rubberstamp everything because it is a co-op. I know you are saying that this a good chance to work across the board, but go and do some homework. You will be horrified. This is not good for Kaua'i's water.

Council Chair Rapozo:  
Mr. Rosa.

Thank you. Anyone else wishing to testify?

Mr. Rosa: I want to say something about this well thing in Moloa'a. When I was with the Department of Transportation, I remember at that time, it was Lihu'e Plantation that had those wells drilled for water and they had three (3) wells that they dug sites: one was 'Aliomanu, one was Moloa'a Camp by the shop there, and another one in the Robinson's pasture right by the Moloa'a Camp. I do not know which one they are talking about because the Moloa'a papaya growers' association, when they had that so-called work project for the papaya farmers, went as far as put up a tank and it was known as (inaudible) 'au'au in the middle of the papaya fields, opposite the Moloa'a Fruit Stand. What happened to that? Which well are they talking about the Moloa'a Well? I know three (3) wells across the site where they had the tank in the back of the Hawaiian Homes near the hole in the mountain. I know that is Hawaiian Homes' property because they put the well and the tank up there for the Hawaiian Homes development. I do not know which one you are talking about that they want the County to more or less bear the brunt of owning it or putting up some expense. I know they had the Moloa'a Hui Association also near the 'Aliomanu Bridge site there. I do not know what the Moloa'a farmers' association or Moloa'a growers' association. I never heard much about it. Let us look into something before this because it is going to be costly. Thank you.

Council Chair Rapozo:

Thank you. Ms. Parker.

Ms. Parker: Alice Parker for the record. New subject—Kaua'i Veteran's Cemetery Renovation; could the funds for that include a current index of those buried there? I spent an hour and a half (1.5) in the horrendous sun, looking for my buddy who had been recently buried—this was some time ago, Bud Morris. There is no current index. You just have to guess and walk up and down. Really, they desperately need an index. Thank you.

Council Chair Rapozo: We will convey that request. They should have one. I was not aware that it was not up to date, but we will definitely send something over to the appropriate people. Mr. Rapozo is here. Lenny, can you come up and shed some light on that?

LEONARD A. RAPOZO, JR., Director of Parks and Recreation: For the record, Director of Parks and Recreation, Lenny Rapozo. My Deputy does it annually and he just completed it about one (1) month ago so it should be located in the pavilion on the left side of the wall.

Council Chair Rapozo: I thought I saw it there at the last ceremony, but I am not going to question Ms. Parker. Did you say it was a while ago? After Bud passed away?

Ms. Parker: Alice Parker. There was a book near the pavilion wall, but I have not looked recently and it is near the pavilion wall. This was a couple of years ago and it was not updated then. Perhaps it has been corrected.

Council Chair Rapozo: Mr. Rapozo just said that it has been updated and it is done every year, so that should help.

Ms. Parker: Great.

Council Chair Rapozo: Thank you. Councilmember Hooser.

Councilmember Hooser: I have a question for Mr. Rapozo.

Council Chair Rapozo: Okay.

Councilmember Hooser: I was wondering, and I may have missed it earlier, but is there a description of the four hundred thousand dollars (\$400,000) of how it is going to be spent?

Mr. L. Rapozo: It is to help with the renovation of the pavilion. The pavilion is in dire need of being upgraded to code. We found that not all of the cells in the pavilion were filled with concrete and that is the issue, but it is to help with the upgrade and the renovation of the pavilion.

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Lenny, I was kind of talking to Mr. Suga and I wanted to mention that there is a County portion also.

Mr. L. Rapozo: Yes.

Councilmember Kagawa: How much is the County portion?

Mr. L. Rapozo: I do not have that off the top of my head.

Councilmember Kagawa: It is almost four hundred thousand dollars (\$400,000), so it is about an eight hundred thousand dollar (\$800,000) project.

Mr. L. Rapozo: Correct.

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: Thank you, Lenny. It was long overdue and thank you to the State for finally contributing. Any other testimony? If not, Ken, I just have one more question. The application that you referenced earlier that shows the project of what they are going to do. I heard you talk about refurbishing or renovating a water tank and lines. So that application has the detail of what the money is going to be used for?

Mr. Shimonishi: It lists out the challenges that they have and the solutions. One of the challenges of...in fact, I will just read it from here is that the water well on land that Moloa'a Irrigation Cooperative does not control, "The well that provides water to MIC is currently situated on State land that is leased to a private landowner, (inaudible) Partners. MIC purchases water from (inaudible) Partners. We have no control over the cost of water and are currently paying one dollar and sixty cents (\$1.60) per thousand gallons for agricultural water, which far exceeds the Hawai'i State average of sixty cents (\$0.60) per thousand gallons. The solution is building a new well, along with a solar powered pump system on land that is controlled by MIC to help bring down the rates correctly from inefficiencies in the system and contributed to the long-term viability of the system for MIC's farmer members."

Council Chair Rapozo: Who is MIC?

Mr. Shimonishi: It lists them as "Moloa'a Irrigation Cooperative," Paul Huber.

Council Chair Rapozo: Is it a non-profit?

Mr. Shimonishi: Yes, it is a non-profit.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I want to just add some information.

Council Chair Rapozo: Do you have any questions for him? If not, we are going to let him go. The other question is, is that application public record? I am assuming it is.

Mr. Shimonishi: Yes.

Council Chair Rapozo: Could you make some copies available for us and the public?

Mr. Shimonishi: I actually scribbled on some, so I will E-mail it over.

Council Chair Rapozo: Thank you, because I know some of the members would like to see it today. Any other questions? If not, thank you. I will call the meeting back to order. Councilmember Yukimura.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: I want to add the information that I do have on this. The Moloa'a Irrigation Cooperative is a fairly new organization, but it is formed with all of the farmers in Moloa'a, which is pretty much the breadbasket of this island if you talk about diversified crops. They are long-time farmers from the area and they need this improved system to continue farming and to expand their farming efforts. It is very much an effort to increase, expand, and continue agriculture on this island. There was overwhelming support at the hearings for it. The conference rooms in the State Legislature were full of people who flew from...I think Ted (inaudible) and others flew from Kaua'i to show up and talk. It is not something to just kill and not receive these moneys. First of all, there was huge effort to get the moneys appropriated. Secondly, they are farmers who have been farming in that area for a long time and were actually producing food for this island. We should not just cross it out here. We need to really understand what it is. Water is key and costs can make or break an operation. Those are some of the issues they are trying to address. I also know that they are looking at alternatives to creating a whole new well. They are looking at other possibilities, but this money allows for the solution.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: I just want to echo what Councilmember Yukimura was saying. I was not part of this proposal. I testified in support, but I was not involved any more than that. I have spoken with some of the Moloa'a farmers, and like Councilmember Yukimura was saying, these are real farmers which is probably why they are not here today because they are out farming. Whether or not they even knew that it was on the agenda, I am not sure. I did run into one of them a week ago or so and mentioned that I thought it was coming up and they said, "Do we have to worry about it?" I said that I cannot imagine the Council turning down over three million dollars (\$3,000,000) given by the State to support farming infrastructure, which I still cannot imagine that. I am sure, just like anyone on our list, if we had questions for the people who put the proposal together, they would be more than pleased to be here to address those issues. I do know, and I have spoken to many legislators directly, that the Department of Agriculture was heavily involved in this. They are supporting this and is part of it all. This has been fairly vetted. It is not like it is a frivolous "pork barrel" kind of thing. This is an issue that came forth as a request by real farmers who want to increase their food production and producing food now. They went to the State Legislature, went through the process, went through the hearings, talked to the Department of Agriculture, and lo and behold against all odds, the funds were approved. Now they are looking for help in facilitating that funding. Apparently, it was either the Legislature or the Department of Agriculture's decision that "let us ask the County to help." I think part of that reason may be because the County can act a little quicker and faster than some of the other agencies. I just wanted it to be really clear that this has been fairly vetted at the State Legislature by the Department of Agriculture and by numerous legislative hearings. It is valuable money that can really go a long way towards supporting agriculture. We always talk about supporting farmers and here is tangible way to do it for very little expense for the County. Thank you.

Council Chair Rapozo:  
Councilmember Kualii'i.

Thank you. Any other discussion?

Councilmember Kualii'i: The only other thing is that I think you already asked for more detail. For me, too, I would like to see how the three million



dollars (\$3,000,000) breaks down between the well and the Post Harvest Facility. It is broken down into four (4) categories of plan, land, design, and construction, but it is not broken down between those two (2) pieces and I would like to see that. I just think that there was some validity to some of the comments made by the citizens in that I was not clear on the Finance Director's statement about "there is a well, but they cannot really use it" or "they have to pay too much, so they are going to make their own well." I would not believe that we can have everybody just digging wells because ultimately, yes, the water is for everyone, but we have to cooperate with each other and do it in a way that does not harm the ability for the water to be distributed fairly. I do not know what the process is and I do not know who makes the approvals, but obviously we support water for agricultural. That is one of the best uses of water because it is our food, but I do want more information. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: I just want to say that I knew of the cooperative because of the work I was doing with the farmers there on the Farm Worker Housing Bill. They were at the same time that we were working on this Bill...housing for farm workers is really a critical piece of making a farming operation successful. I know that they were working on this cooperative because water is the other essential element for farming.

Council Chair Rapozo:

Councilmember Chock.

Councilmember Chock: Thank you, Chair. I think it brings up the question about surface water again and the need for us to look at how it is that we are managing it and looking at it more broadly, the ideas and needs of more water sources. I am going to support this of course. I do see it as a gift. However, I think there are some big questions that are coming up. Obviously for the Finance Director, it is hard to tell what questions will come up as a Council, but I think that is what we need to be prepared to be able to answer how it is these funds are being utilized properly. I will add that I also agree with Chair Rapozo that if we are to look at a sustainable budget, a balanced budget, we have to look at all funds that are coming through our County and attribute them properly. I agree that it costs money to administrate. If we are not tracking how it is that we are bringing money through our County to whatever degree, then it is going to be difficult to provide that balanced budget. I would encourage us to look deeper into that in how it is that we are accepting money. As much of a gift that it is, I think that we need to be good stewards of it and attribute appropriately what it is going to cost for us to be a part of it. Thank you.

Council Chair Rapozo: Thank you. Any other discussion? If not, I just have a few comments. I did not once mention the word "kill" today. I did not say that I wanted to "kill" this allocation. In fact, I said that we need to get this money out because those people need the money. As Councilmember Hooser asked our Parks Director, "Can you give me a description of what the four hundred thousand dollars (\$400,000) is going to be used for?" I asked the same question of the Finance Director, but the inference is that I am not supporting this. That is not the case. This is three million dollars (\$3,000,000); three million dollars (\$3,000,000) that the State said, "Hey, County, you go administer," but our own Finance Director does not really have an understanding of what this money is for, which is not his fault. Councilmember Yukimura has the knowledge and the background, but I do not. That is why I asked the question. Councilmember Chock

got my point, which is that we cannot just continue to volunteer our services. Yes, we want to partner and we want to help everybody, but there comes a point where we have to understand what the cost of that is. I do not know what the money is going to be used for. Based on that application, I cannot tell. I also cannot tell what the measurables are. Are we going to write the check one time? The Finance Director does not know. Do we just give him the three million dollar (\$3,000,000) check and hope that they do what they are supposed to do? I do not know. I am not going to hold up the funds. Of course, I am going to support it, but I am also going to support it with the condition that we have the ability, or my understanding is that hopefully we have the ability to control the dispersals of this money and that we are not just writing a check for three million fifty thousand dollars (\$3,050,000). I sat in Anahola one year with the Feds giving a non-profit a check of a lot of money...millions. I sat there and had all the photo ops and nothing was done. Is that right? Do we just say, "Sorry. The intention was there." I think if the County is going to be managing the grant, we need to number one know what this grant is, what the requirements are, and have some measureables and a timetable that they have to meet before they get another check. That is all I am saying. Whether it is farmers or ranchers, it does not matter. It is still our public money. The fact that I have a question does not mean that I do not support farming in Moloka'i. Absolutely not. That is what I have and obviously to encourage the Finance Director and the County as a whole to really make sure that we are moving this forward. With that...

Councilmember Yukimura: Chair?

Council Chair Rapozo: Councilmember Yukimura, you already spoke twice. We are done.

Councilmember Yukimura: Chair, I want to concur with you.

Council Chair Rapozo: I know you want to, but again...

Councilmember Yukimura: And make a suggestion.

Council Chair Rapozo: You can do that in writing. Let us move on.  
Can I get a roll call?

Councilmember Yukimura: I appeal the decision of the Chair.

Council Chair Rapozo: I am sorry, JoAnn. We do this every week.

Councilmember Yukimura: Well, I am sorry because you stop me from speaking.

Council Chair Rapozo: No, the rules stopped you from speaking, not me.

Councilmember Yukimura: No, this is not a two (2) time...

Council Chair Rapozo: It is a two (2) time...

Councilmember Yukimura: We are not discussing it.

Council Chair Rapozo: Yes, we are.

Councilmember Yukimura: We were discussing information.

Council Chair Rapozo: Recess.

There being no objections, the meeting recessed at 11:58 a.m.

The meeting reconvened at 12:06 p.m., and proceeded as follows:

Council Chair Rapozo: The meeting is called back to order. Roll call.

Councilmember Yukimura: Point of order.

Council Chair Rapozo: What is the point?

Councilmember Yukimura: We should be able to discuss this.

Council Chair Rapozo: State your point the rule that is being violated.

Councilmember Yukimura: The rule that is being violated is the Chair's decision. The Chair has had in the past, discretion, to allow discussion over and above the second time rule. Much of my information was not an argument for or against; it was to give information that was missing.

Council Chair Rapozo: What is the rule, JoAnn? You need to state a rule with the point. That is all I am asking.

Councilmember Yukimura appealed the Council Chair's decision to disallow her to comment a third time, pursuant to Rules of the Council of the County of Kaua'i.

Councilmember Yukimura: I am not...the rule is the two (2) time rule and I have appealed your decision not to make exception to the two (2) time rule.

Council Chair Rapozo: Okay.

Councilmember Yukimura: So now I want to give some arguments about why...

Council Chair Rapozo: No, I am going to call for the vote. It is clear that you want to speak for the third time. The rule says twice.

Councilmember Yukimura: But I believe there is discussion allowed on appealing the decision of the Chair.

Council Chair Rapozo: I am saying that we are going to go to the question. We have had this discussion before, JoAnn, and it is getting old. Again, we want to move on.

Councilmember Yukimura: Chair, all I am trying to do is to give a solution to the problem that you and Councilmember Chock raised and I think it is

terrible to be able to cut off discussion that is working towards a solution to the problem raised.

Council Chair Rapozo: I said you can submit that in writing.

Councilmember Yukimura: But the public has to be able to hear this discussion.

Council Chair Rapozo: No, they do not have to hear it.

Councilmember Yukimura: Yes they do. That is part of the whole spirit of the parliamentary procedure rules.

Council Chair Rapozo: JoAnn has called a point of order saying that I have violated the rule of allowing members to speak twice. The rule...

Councilmember Yukimura: No, I am saying that I am appealing the decision not to give an exception to the two (2) time rule.

Council Chair Rapozo: Okay. That is fine. I stand by my ruling that the discussion is done. Do you have a question?

Councilmember Kagawa: No, point of order. What is her motion? It is to speak three (3) times, instead of the rule, which states two (2) times?

Council Chair Rapozo: Yes.

Councilmember Kagawa: Okay. Thank you.

Council Chair Rapozo: She has raised a point. Is there a second? Do not argue, JoAnn. Is there a second?

Councilmember Yukimura: Point of order.

Councilmember Hooser: If we need a second, I will give the second, but I do not believe that we need a second.

Councilmember Hooser seconded the motion made by Councilmember Yukimura to appeal the Council Chair's decision to disallow her to comment a third time, pursuant to Rules of the Council of the County of Kaua'i.

Council Chair Rapozo: I believe that we do.

Councilmember Yukimura: Well, let us see. Do we need a second? We do. Okay.

Council Chair Rapozo: Thank you, Scott. I think this is only the fourth time that we have been down this road. I am getting irritated with it. The point was made, we are trying to follow the process, and we could have been done with this already. But we challenge the process...

Councilmember Yukimura: I could have made my comments.

Council Chair Rapozo: Exactly. The motion and the second has been made. Any discussion? Councilmember Chock.

Councilmember Chock: Chair, it is obvious that we have to tackle this. We are not going to do it on the floor here today, but I think there is a request for some time or maybe have a workshop to discuss agreements. I think that obviously this is a cumulative effect based on what people on the table feel as abuse, and the only way to become more open to hearing a little bit more or whatever the request is that we can at least all agree outside of the rule when that discretion of the Chair should be acknowledged or not. It is up to you. This is your discretion. I think that the decision is being made based on what we have seen in the past. It is difficult to get to the things that we need to get to when we go in this circle. I just want to request that this be taken care of. If not online now, then we should spend some time on it as a body with a workshop or whatever it takes. I think that we waste people's time, effort, and energy by doing it here. Thank you.

Council Chair Rapozo: Let me just say that the rules are in place. The rules were approved by six (6) of the seven (7) members. The rules regarding the amount of time Councilmembers can speak and the amount of times they can speak, in addition to the length of time they can speak, are approved. There is also a process in here that if a Councilmember wants to challenge a rule or challenge a decision of the Chair, they can do that. The process does not always necessarily get followed. It is an argument. No, that is what the rules are for. You make your point, you get a second, we have the discussion, we vote, and then we move on. If all of you want to allow Councilmember Yukimura to speak three (3), four (4), and five (5) times, and the majority of you feel that way, we are going to let her do it. That is the rule. I am just trying to enforce the rule. It is frustrating that whenever we get to a point and Councilmember Yukimura—again, it is not about Councilmember Yukimura, but it always is Councilmember Yukimura. This rule only bothers her. I said that because it is the truth and I think the public sees it. My point is that the rules are there so that we address these issues. Councilmember Chock, you are right. If the point was made and everybody respected that and we lived with the result of the vote, we would not have this. But we have this because Councilmembers want to argue and they want to challenge and say, "Hey, that rule is stupid." Well, the rules were approved by six (6) of the seven (7) members. I did not create this.

Councilmember Yukimura: It was not six (6) of the seven (7).

Council Chair Rapozo: This rule was in place before I got to be the Chair. I just decided to enforce it. That is all. Everybody thinks that I am the dictator, but the rule is the rule and that is all I am saying. We can have this discussion today and waste the public's time, waste our staff's time, or we can follow the rule. Councilmember Kuali'i.

Councilmember Kuali'i: Chair, I just wanted clarity, and we should do it every time and be consistent, is that it is your discretion and you made the decision not to allow Councilmember Yukimura to speak for a third time. If she challenges that, that is challenging your ruling. If we vote "aye," that means we support her challenge and she can speak a third time. If we vote "nay," that means we do not support her challenge. I think we should keep it clear that way every time that you made your call and the discretion. It is what it is, unless we vote to overturn that.

Council Chair Rapozo: Correct.

Councilmember Kualii: Okay.

Council Chair Rapozo: I have offered to Councilmember Yukimura on many occasions that if she wants the rule changed, she can follow the process, get the resolution, and I will commit to put it on the floor where we can have the discussion at the time and vote. This is a waste of time to be going through these issues during a Council Meeting when we have some important business to take care of. That is all I am saying.

Councilmember Kualii: I call for the question.

Council Chair Rapozo: Any other discussion? Councilmember Hooser.

Councilmember Hooser: I have a point of clarification. What is the question that we are speaking on?

Council Chair Rapozo: Councilmember Yukimura has...

Councilmember Hooser: No, before that. The main question. Is it a motion to approve or receive?

Council Chair Rapozo: A motion to approve.

Councilmember Hooser: So the motion to approve has been seconded.

Council Chair Rapozo: Correct. I called for a roll call and Councilmember Yukimura raised a point.

Councilmember Hooser: Okay. The question now is the rule that says a member may not speak more than twice to the same question without leaving the presiding officer subject to appeal the body.

Council Chair Rapozo: Correct.

Councilmember Hooser: So what Councilmember Yukimura is doing is appealing to the body to say, "Yes, we would in this particular situation support her speaking more than twice."

Council Chair Rapozo: Correct.

Councilmember Hooser: Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I want to say that this two (2) time rule that was put into place was not passed by a 6:1 vote; I believe it was a 4:3 vote. In Robert's Rules of Order, it says that to cut off debate, because debate is so important to a democratic process, you need a two-thirds vote and we passed this two (2) time rule with four (4) votes. It is a huge violation of the basic democratic principle of robust debate. My points that I wanted to make have been neither repetitive, but they have been to contribute towards the decision making. In this

case, what I want to say would contribute towards addressing the problem that was raised by the Chair of accountability. It is a very relevant point, and to cut it off arbitrarily when even some of my comments were not to debate the issue...we were not even in discussion...but it was to add information and answer some of the questions, is just a terrible violation of that concept of robust debate and I feel I should be able to say something that is relevant and contributory to the discussion, and that the people who are watching should be able to hear it. It is not something that I can put in writing.

Council Chair Rapozo: I would love to poll the audience right now to see and have them part of this, but I am not going to do that. I will tell you that every day, every session, and every item I want to speak for more than five (5) minutes. I do, because I have that much "important things" to tell the public, but I am bound by the rule of five (5) minutes. Is that constitutional? Is that illegal? Whatever it is, it is a rule that this Council passed and that is the rule that I am going to follow and enforce until it is changed. That is the way it is going to be. If you do not like it, then you have two (2) options: change the rules and change the Chair. With that, roll call on the point of order.

The motion made by Councilmember Yukimura to appeal the Council Chair's decision to disallow her to comment a third time, pursuant to Rules of the Council of the County of Kaua'i was then put, and failed by a vote of 3\*:4:0 (*\*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Chock was noted as silent, but shall be recorded as an affirmative for the motion; Councilmember Kagawa, Councilmember Kaneshiro, Councilmember Kualii, and Council Chair Rapozo voting no.*)

Council Chair Rapozo: Roll call on the motion to approve.

The motion to approve C 2015-209 was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Yukimura, Rapozo	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: I have a point of clarification. We just voted "yes" on the motion to approve, right?

Council Chair Rapozo: Yes.

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: I know that the Boys & Girls Club is here for an item, so I am going to ask that we take that out of order with no objections so that we can get them out before lunch. We have to take a lunch break at 12:30 p.m. With that, can we go to the Legal Document next?

There being no objections, C 2015-212 was taken out of the order.

LEGAL DOCUMENT:

C 2015-212 Communication (07/23/2015) from the Director of Parks & Recreation, recommending Council approval of a License Agreement with Boys & Girls Club of Hawai'i, a non-profit Hawai'i corporation, for three (3) portables and a portion of the grounds immediately surrounding the portables located at the Kaua'i War Memorial Convention Hall in Līhu'e, Kaua'i, Hawai'i, being a portion of Royal Patent 4480, Land Commission Award 7713, Apana, Part I to V. Kamāmalu, to be used for youth-related activities in the Līhu'e area.

- License Agreement

Councilmember Kagawa moved to approve C 2015-212, seconded by Councilmember Kualii.

Councilmember Yukimura: Chair, I just want to say that I will be recusing myself because I am on the Advisory Board of the Boys & Girls Club.

Council Chair Rapozo: So noted. Thank you, Councilmember Yukimura.

*(Councilmember Yukimura is noted as recused as 12:13 p.m.)*

Councilmember Chock: Chair, can I just get less than a few seconds for a personal privilege?

Council Chair Rapozo: Sure.

Councilmember Chock: I just wanted to welcome back Jacy Youn. I have not seen her since she has been back on the island. I recognize her new position at the Boys & Girls Club. It is always good when we see...we always talk about having our people who are born and raised on Kaua'i come back who have good leadership capacity and I just wanted to welcome her back. Thank you.

Council Chair Rapozo: Thank you very much. With that, if there are no objections, I will suspend the rules.

There being no objections, the rules were suspended.

Mr. L. Rapozo: Thank you, Chair. For the record, Director of Parks and Recreation, Lenny Rapozo. As Councilmember Chock has introduced, her, Jacy Youn is the new Executive Director of Boys & Girls Club. We are here today, and you have a copy of our presentation, to look at the Boys & Girls Club in Līhu'e, which is the second largest Boys & Girls Club in the State of Hawai'i next to Spalding, to amend the current licensing agreement that we have with them. Currently, we have a five (5) year licensing agreement and we want to extend that to ten (10) years. The current licensing agreement allows them to have the usage of one (1) portable down behind the Convention Hall. We are asking this body to agree or approve them to use all three (3) buildings now for the following reasons: "The mission of the Boys & Girls Club is to empower children to become responsible citizens through education, cultural enrichment, and social service. It is a non-profit organization serving youths from ages seven (7) through seventeen (17) in five (5) core areas: Character & Leadership, Health & Life Skills, Education/Career/Leadership Development, and Arts, Sports/Fitness/Recreation."



The Kaua'i branch consists of three (3) primary locations in Līhu'e, Kapa'a, and recently it was in Kekaha, but they are working on looking for a more stable location on the west side, in either Waimea or Kekaha.

The impact on young people stems from five (5) key elements that provide: 1) a safe, positive environment, 2) fun, 3) supportive relationships, 4) opportunities and expectations, and 5) recognition. Līhu'e has grown from an outreach site to registering more than five hundred (500) members. About one hundred seventy (170) attend daily at their clubhouse. They possess or they have an annual budget of two hundred nine thousand dollars (\$209,000). In 2011, the County responded to a request to do a Līhu'e Clubhouse. Prior to 2011, members met in the hallways and corridors of Wilcox Elementary School. The first renovations included Phase 1, which are supported by the County of a grant of one hundred twenty thousand dollars (\$120,000). That was completed in May 2013 and not in 2012, as shown on your slide. Using the three (3) abandoned portable buildings in the back of the Convention Hall...I am sorry...the one (1) portable building in the back of the Convention Hall...they did the reconstruction and the cost was ninety thousand dollars (\$90,000). The balance of the thirty thousand dollars (\$30,000) that made up the one hundred twenty thousand dollars (\$120,000) was used to construct a basketball court up in Kapa'a and we did that presentation when we first came back to the body to provide that update. They finished the one thousand (1,000) square foot, which was finished in May of 2013. Their members make up predominantly of Native Hawaiian, Filipino, Japanese, Marshallese, and Caucasians. Of these cultural ethnic groups, approximately eighty percent (80%) are considered to be disadvantaged and require additional support of service providers. Phase 2, which we have worked on is the second portable, which was completed in April of 2015, which was the donation of VMware, a construction price of about seventy-seven thousand seven hundred ninety-seven dollars (\$77,797). If you remember, it was a big, big group of approximately six hundred (600), I believe, that came to the island and not only put time in to the second phase, but they also did work on our Līhu'e County ballfield there.

Councilmember Kagawa: Lenny, can you clarify? I do not think anybody knows from the public what "VMware" is.

Mr. L. Rapozo: VMware is a software group that part of their company is that they want to give back to the community. So this software group will do projects and one of the criteria to be working for them is that you have to come to have a convention and they go into the community and do this type of service work.

Councilmember Kagawa: To clarify, what was the construction piece of Phase 2? When I saw VMware, I thought it was some kind of construction material or something.

*(Council Chair Rapozo was noted as leaving the meeting during the presentation by Mr. L. Rapozo.)*

Mr. L. Rapozo: No. This group came in and of the three (3) portables, they started work on the second portable. They redid the second portable. We attempted to come here, but there were some government amendments into how we needed to redo this licensing agreement because of what happened with the tech center and we went through some clarifications at the attorney's office. So rather than stop, which we already worked with them and

planned the renovations of the second phase, we just let it happen because we still had the original licensing agreement, although it did not cover the second building. It covered the first building and we had something in place. Phase 2, which is the second building that they did, was completed in April of 2015. The third phase, which is the third building, and if you are familiar with that and you have a picture in the back of your handout, it is the building that is off to the side. They are looking to renovate that to meet their needs of the clubhouse. Phase 3 will provide covering for all of the children, but not the teen programs. The building will include another eight hundred (800) to one thousand (1,000) square feet of program area. Today the club serves over one hundred seventy (170) individuals daily and the Lihue Clubhouse serves one hundred twenty (120) elementary, twenty-five (25) middle school, and twenty-five (25) teens daily. The Lihue Clubhouse total youth served in 2014 are there for your review and is broken down by days. This information is provided to us by the Boys & Girls Club. Its proximity to Wilcox Elementary School is an ideal location. It provides a facility and we improve the existing facilities to include the technology center. It has a teen center, the Phase 3 program space. They want to build upstairs to include restrooms and add solar panels to help with the utilities of the clubhouse. We, the County, have ongoing partnerships with the Boys & Girls Club. They are very involved with the Mayor's Aloha Garden in front of the Convention Hall. They are taking over that of growing the food. They do annual or periodic park cleanups at those particular parks at Kalena, Lihue, and Puhi. During the Mayor-A-Thon, they take charge of the stage and ensure that the stage we use at Kapa'a Beach Park is safe and in good working order while the event is ongoing. They are working to secure donations for Phase 3. The Boys & Girls Club is partners with Life's Choices, which involves anti-drug messages for the kids that attend their program. By approving this licensing agreement, it will enable the County to have a positive, stable program that focuses on the Lihue youth. We had three (3) vacant buildings there that were left idle and deteriorating. It would allow them to move into the vacant buildings and make those buildings useful. This provides the Boys & Girls Club a long-term agreement, which will help them to secure grant funding to continue their good work, as well as raise the money to complete the renovations of the third building, which we just discussed. I briefly wanted to just go over this. I know it has been a long morning for everybody. If you have any questions of me or Jacy, we can entertain them at that time. In the back of your handout, and I believe we have a picture here, is the area at the Lihue County ballpark that we are looking at. This is Phase 1. This is where we did the original five (5) year licensing agreement. This is Phase 2 and 3 that we are talking about now. The portable is the one that is turned towards the side. This is the second phase portable where the VMware had come in and done the renovation work. This would add a nice compliment and it would give them more working area. Currently, with the amount of kids that they use, they use this park heavily. When it rains, some of the kids actually need to take shelter underneath the grandstand because they did not have enough room. This will provide enough adequate space to handle the kids that are coming from Wilcox. I need to emphasize that Wilcox does have an After-School Plus (A+) program or an A+ afterschool program. Aside from the great things that the Boys & Girls Club do, they fill a void, and I mentioned this before. They fill a void, because in order to go to A+, both parents have to work. The Boys & Girls Club will take any child, whether their parents work or not and there are a lot of cases where one parent works and the other parent is watching two (2) or three (3) kids. This provides at least that outlet for the afternoon that that parent can continue to be at home, getting things ready, and they have a great experience at the Boys & Girls Club. I would like to just mention that. Does anybody have any questions?

Councilmember Kagawa: We have approximately six (6) minutes before we are going to take a lunch, so I anticipate that we will not have any problems getting approval. I will open it up to the Members. I know that a couple of people from the public want to speak as well. Questions? None? Jacy, welcome. Do you have anything that you want to state? Thank you for serving.

JACY YOUN, Executive Director of Boys & Girls Club of Hawai'i: Thank you, Members of the Council. On behalf of the Boys & Girls Club, I just want to say that they fully support this measure to extend our license agreement and thank you for the existing agreement that we have. As Mr. Rapozo testified or mentioned, we are kind of bursting at the scenes in Līhu'e where we are the second largest club in the State and at our capacity right now, you can imagine one hundred seventy (170) kids sharing one (1) bathroom every day. It is tight in there, so this expansion will allow us to get more funding and our grant opportunities will be greater if we have a longer lease. If we can expand our building, we can get more space for the kids, as well as some new office space. The existing license agreement has been very helpful and beneficial to us, so we are very appreciative and we would fully support the measure to extend it. Thank you.

*(Council Chair Rapozo is noted as back in the meeting at 12:25 p.m.)*

Councilmember Kagawa: Thank you. Back to you, Chair. I think we are ready for public testimony.

Council Chair Rapozo: Thank you. Any other questions? If not, thank you very much. Is there anybody in the audience wishing to testify?

Ms. Fountain-Tanigawa: We have one (1) registered speaker, Matthew Bernabe.

Mr. Bernabe: Matt Bernabe for the record. I support the Boys & Girls Club expanding in Līhu'e and support whatever our County can do to help this non-profit help working families. I have two (2) daughters and my oldest went completely to A+, and then my youngest went to A+ for a couple of years. I can tell you that right off the bat, it is eighty-five dollars (\$85) or maybe even more now per month for A+. On top of that, when you pick your kid up at the end of the day for A+, they are hungry. The Boys & Girls Club feed them and take care of them. Once we converted over to the Boys & Girls Club, it was so much easier. Even the staff—the fact that they have some of the older kids taking care and instilling that responsibility, I think it is really good. The one thing that I would like to point out, too, is that the Boys & Girls Club takes the kids out and does things outside, and not just school activities. They pick them up. I know that the Kapa'a one has girl outings; I do not know if that happens in Līhu'e. It is a necessary thing when you have to work two (2) or three (3) jobs, or even if you have another kid you want to take out. I support this. I just wanted to put my official support behind the Boys & Girls Club.

Council Chair Rapozo: Thank you, Matt. Anyone else? If not, I will call the meeting back to order. Discussion? Councilmember Kagawa.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: Thank you. First of all, I would like to thank all of the organizers and workers of Boys & Girls Club and Lenny. In my view, I was involved with the Līhu'e Baseball League for a while coaching and stuff, and they took a rundown shack and made it into a useful facility. It provides love, mentorship, 'ohana, and safety for our *keiki* when the parents are busy working, or even when they are not working, just to provide a lot of good things for our children as they grow up. That is the most important thing we can give our children, which are the friendships and what have you growing up here. I just want to thank you for all that you do.

Council Chair Rapozo: Thank you. Any other discussion? If not, roll call.

The motion to approve C 2015-212 was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Hooser, Kagawa, Kaneshiro, Kualī'i, Rapozo	TOTAL – 6,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Yukimura	TOTAL – 1.

Council Chair Rapozo: Thank you very much. With that, we are going to break for lunch at this time and be back at 1:30 p.m. where we will have the Barking Dogs Bill, and then the agenda will follow immediately after that. Thank you.

There being no objections, the meeting recessed at 12:29 p.m.

The meeting reconvened at 1:33 p.m., and proceeded as follows:

*(Councilmember Yukimura is noted as back in the meeting at 1:33 p.m.)*

Councilmember Kagawa: Clerk, can you please read the item of Bill No. 2590, Draft 1?

**BILL FOR SECOND READING:**

Bill No. 2590, Draft 1 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, BY REPEALING ARTICLE 25, RELATING TO BARKING DOGS: Councilmember Kualī'i moved for adoption of Bill No. 2590, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Kagawa.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Chair, I was looking for you before the meeting, but I have a diagram that shows the outcome of the Barking Dog Ordinance based on the Kaua'i Humane Society statistics. At some point early on, because I think it will help both the public and us, I would like to present it.

Council Chair Rapozo: Let us do that now.

Councilmember Yukimura: Okay. Thank you.

Councilmember Kagawa: Chair?

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I just want to state that we had a Committee Meeting and the work should have been done in Committee. Thank you, Chair.

Council Chair Rapozo: I understand. Go ahead, Councilmember Yukimura.

Councilmember Yukimura: Thank you. We need to get it on the screen. Could I have the pointer? I hope you all can read this. This diagram tries to map out the outcome under the Barking Dogs law based on the Kaua'i Humane Society's statistics that were submitted on June 15, 2015. You will see that this arrow here defines the Barking Dogs law process under the Ordinance. Part of process is undertaken by the Kaua'i Humane Society and part is done by the Prosecuting Attorney. So it starts with a neighbor who is disturbed by a barking dog. The top shows the different steps that one can take in increasing intensity and the bottom shows how the problem is resolved one way or the other. So a neighbor is disturbed by a dog. An unknown number of people choose not to file a complaint, either because just the existence of the law has made their dog-owning neighbors more conscious that the law is in place or some people just do not want to aggravate their relationship with their neighbors, so they do not make a complaint, even though they may be bothered. Seventy-one (71) are bothered enough to file a complaint with the Kaua'i Humane Society. Of that seventy-one (71), fifty-three (53) do not choose to submit logs. We tried to break that down. For fifteen (15) of them, there was clear communication from the complainant to the Kaua'i Humane Society that the problem had been resolved one way or the other. Sometimes because the dog owner having received information from the Humane Society stopped the dog from barking, using the different ways that they learned or the complainant has tried to use the log and found out, "Wow, the barking I am disturbed by does not meet the criteria," or, "I do not want to go through all of this trouble to fill out the log." So they just decide that filling out the log is worse than the barking. We know that fifteen (15) were resolved. This is by education, one way or the other. Eight (8) were closed for miscellaneous reasons like the person moved or the packet came back...I am sorry...there were some other reasons. Thirty (30) did not submit logs. We are not sure why and it would take a lot of work to go call people and find out. Eighteen (18) logs were submitted. Twenty-five percent (25%) of the seventy-one (71) complaints proceeded to a log. In one case, the Humane Society found that citation was not warranted, so it is not true that there is nobody making an analysis of the situation. On seventeen (17) of the cases, it was decided that citations were warranted, and then they go to the Prosecuting Attorney. In two (2) of the seventeen (17), the barking stopped before trial; although one proceeded to trial and it was found not guilty, but the barking had stopped, so two (2) barking cases had stopped. In one, the dog owner prevailed, and in the other one, the Prosecutor dismissed the case because the complainant refused to be a witness, which is fine because this whole process is based on the complainant making choices all along the way about how bad the barking is and whether they want to keep doing the work to keep it alive. As you know, we do not allow any anonymous complaints. The complainants have to be accountable for their complaint. There are thirteen (13) cases pending in trial, which is...I am sorry...that is supposed to show an eighteen percent (18%) that are still pending. Of the seventy-one (71) complaints, fifty-eight (58) are resolved. Fifty-three (53), the complainants choose not to submit a log.

One (1) is insufficient evidence for citation. Two (2), dogs stop barking before trial. One (1), dog owner found not guilty; Prosecutor did not proceed to trial. I might say that where the dog owner is not found guilty, maybe the law is working, as some of you have said.

Council Chair Rapozo: Councilmember Yukimura, if you are going to...

Councilmember Yukimura: Therefore...

Council Chair Rapozo: Hang on. If you want to do that as a resource document, that is fine, but if you are going to do commentary, then that will be applied to your five (5) minutes. If you are going to use it as a resource document to state the numbers for the public, that is fine.

Councilmember Yukimura: Okay. Thank you. So fifty-eight (58) were basically resolved. That is eighty-two percent (82%) of the seventy-one (71) complaints that were resolved by this law.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: I just talked to Justin at Friday's Bon Dance and asked him what the status is of how many went to trial and lost. I would just like to ask Councilmember Yukimura if she checked with him because I was informed that on the Committee Meeting day of July 22<sup>nd</sup>, another case was in trial and another dog owner won. He told me that makes three (3) cases that went to court, went to trial, and lost. The one, as Councilmember Hooser brought up the last time, where they pled guilty and Justin was not able to tell me whether the plea was because he admitted that his dog was a barking problem or because it was a cheap fine and he did not want to hire an attorney. I do not know if you asked Justin recently about the numbers, but on the 22<sup>nd</sup>, there was another one that lost in trial.

Councilmember Yukimura: Okay. That is one of the thirteen (13) then. This law does not determine who is guilty and who is not. It provides a process for dealing with it and if there was this one case now that would go into the light purple, which is number 1, trial, dog owner prevails, then it will be two (2), and it will be twelve (12) cases pending instead. That would be the update on the chart.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: So the number that I guess is fifty-three (53), no log submitted—because thirty (30) says specifics unknown, how do you define “resolved?”

Councilmember Yukimura: “Resolved,” because the complainant does not want to go forward.

Councilmember Kualii: So for me when I am thinking about it is a Barking Dog Ordinance, the dog has been barking, and it has been substantiated; it is resolved when the dog stops barking. But in fact, none of that is necessarily...maybe the fifteen (15) is substantiated, but for the thirty (30), we do not know. The complainant may have thought that it was worse than they thought until they started...I think when the Humane Society Director was talking that

when they actually tried to keep the log of ten (10) minutes or twenty (20) minutes, they realized that what seemed to be a worse problem for them really was not, so they did not have the backup, if you will, the proof, to say that they had a viable complaint. So if many of those complaints do not even start off as being viable, how can we say it counts towards being resolved?

Councilmember Yukimura: You are right. It may have been that, but it also could have been that the education given to the dog owner stopped the dog from barking and the person just did not bother to call the Humane Society to tell them the dog barked, and that is okay because you the way to tell the Humane Society that there is still a problem is to submit the logs.

Councilmember Kualifi: So when you talk about education, in the Humane Society's statistics, that is what they talked about what the eight (8) is, that because of their outreach and education, eight (8) of them were resolved.

Councilmember Yukimura: No, the sixteen (16)...

Councilmember Kualifi: What about the thirty (30)?

Councilmember Yukimura: For the fifteen (15), the Humane Society knows for a fact that the problem was resolved. Eight (8) were closed for reasons unrelated to resolving a barking dog problem. Thirty (30) were resolved either because of education of the dog owner, so the dog stopped barking and people did not have to file a log, or the complainant found out that maybe the dog barking was not as bad as they thought it was because when they tried to fill out the log, they found that it did not rise to the standard that is required by the law, or there could be a whole bunch of different reasons, but the main thing is that people are choosing not to move forward, which means the problem has been resolved. If the law is not working for those fifty-three (53), they would be here today to tell us how to amend the law. But most of the people are saying to keep the law because it has been working.

Councilmember Chock: I have a follow-up, Chair. So the fifty-three (53) were all part of educational?

Councilmember Yukimura: Yes. As soon as the complaint is filed, information is sent to the dog owner and the logs are sent to the complainant with instructions as to how to fill them out, but to wait for ten (10) days to allow the dog owner to institute some of the efforts or techniques to keep the dog from barking.

Council Chair Rapozo: It is unfortunate that the Humane Society did not follow-up with those people to ask what the reason was that there was no response, but we do not have that information. So outside of that, it is just speculation as to what...

Councilmember Yukimura: But the key is that the logs were not filed because if the complainant wanted to keep going on this, they would have filed the logs, and they are required to file the logs. This is not an easy process in which to complain. It takes work.

Council Chair Rapozo: Let me just say this then. As a former police officer, there are many crimes that occur out there today that go unreported. They go unreported for many reasons. People do not want to be embarrassed because the

crime was committed against them like a lot of the white collar crimes, sex assaults, or the family abuse cases that go unreported. The fact that we do not have documentation that the crime occurred and the fact that we do not have a response from the complainant does not mean that the crime stopped. It just means that the complainant said, "I am not going to go through this process." All of the cars that get broken into at the end of the road—I have heard it from victims that say, "Why call the cops? They cannot do anything." We should not speculate on anything unless we have the data. That would be my only caution.

Councilmember Yukimura: Chair, I would be fine if you wanted to defer this Bill and I will get the data.

Council Chair Rapozo: No, we are not deferring.

Councilmember Yukimura: It will take time to get the data. If you really want to get the data, we can do it. If someone had said, "How is the law working? Let us find out," and initiated a process to find out, that would be fine. Actually, the burden of proof on someone wanting to repeal this law is to have the data and there is no data really justifying repeal.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Councilmember Yukimura, I just have a general question. If we replaced the Humane Society with the Kaua'i Police Department (KPD) to issue citations and fines and be the law enforcement officer to enforce the Barking Dog law, would you think that is a substantive change to the original Bill? It would require getting KPD's response as to what would the public suffer by them focusing their energies, which they said they do not want to have a part in, as well as any human resources needs that they might need to take on this task. Would you consider that a substantive change to the Bill? A substantive change would mean that a new bill is required

Councilmember Yukimura: Well, the title of the Bill is "repeal." You cannot have any amendment that contradicts the title. So the Bill is really not amenable, whether you have a substantive amendment or not.

Councilmember Kagawa: It is a simple question.

Councilmember Yukimura: The reason why I would not support it is because it would make the law unenforceable. I believe in Honolulu, the police department is required to respond and they do not have the manpower or ability to respond. Therefore, the law does not get enforced at all. Furthermore, the Humane Society is the more logical one to do the education, etcetera. This is a much more workable Bill and we looked at the police involvement and I think we found the best formula for it in this Bill.

Councilmember Kagawa: I want to make sure that you say the whole story because Hawai'i island also has no humane society involvement. They receive about twenty (20) calls per month to the police department and they said it is really not working there.

Councilmember Yukimura: Well, it would be interesting to see how a law like this would work on Hawai'i island if they had a humane society that was



willing to do the kind of first-responder work that our humane society has been willing to do. I think we found a paradigm where it actually works.

Council Chair Rapozo: I would think that the standard of proof on Hawai'i island would be the same as Kaua'i, that in fact the trouble is proving that the dog was not provoked by an external force, whether it would be cats, rats, wind, or sirens. I think that is the issue of the enforceability of this Bill or this Ordinance. The State cannot prove beyond a reasonable doubt because this law allows for that affirmative defense that you have to prove what caused the dog to bark or that it was barking for no reason. Councilmember Hooser.

Councilmember Hooser: Thank you, Chair. A couple of things. I think that just because dog owners won two (2) or three (3) first cases does not mean that it is a bad law. From a dog owner's perspective, it might mean that it is a good law because they were not unfairly penalized. Maybe they were able to prove that it was a cat or whatever. I do not think we judge the law by a conviction rate, especially a new law like this. This may be doing what it was intended to do in the first place, not unfairly punish or hold innocent dog owners dealing with a cat going into the yard. To say that because the first two (2) or three (3) cases lost is not a fair judgment as to whether the law is working or not. I think I used this analogy before about speeding. The efficacy of a law or whether a speeding law is working or not is whether people are going the speed limit, not how many tickets are given out or how many people pay their fines. It is about the impact. Likewise, breaking into cars. I agree with you. People probably figure that a lot of people are not going to call the police because they do not think it is going to be enforced. That does not mean that we repeal the breaking into cars law. That is not something we do. We do not take away that law because it does not seem to be working as well as it should. We look at the law, as we should, and say, "How do we make the breaking into cars law better?" As Councilmember Kagawa mentioned the suggestion of having the police be the enforcement, I think the way to approach this, and I would encourage other members to consider this, is to receive this item and immediately introduce a bill that offers to amend it and however the Councilmember thinks it would be improved, and then we could have that proper discussion and a majority of members here can decide whether the police or whether there is some other way to do it. But just to repeal it, to take away a law in its entirety without something to replace it when it is proven that the people want this. When you look at the testimony, the vast majority of the people are testifying that they think we should have a barking dog ordinance and they think it is working. They say repeatedly that in their neighborhood, there is less noise than there was before the law. Whether they are complaining or not, that is what people are saying. I would suggest that this Council consider receiving this item, and then the proponents who believe it needs changes to introduce changes immediately, and then we have that discussion. I think it is a more responsible and reasonable approach. Thank you.

Council Chair Rapozo: Well, first of all, I would disagree that there is no penalty because if you talked to the innocent dog owner whose dog was barking because of a cat, who had to take a day off of work or hire an attorney to go to court—that is a penalty in my opinion. As far as speeding, I tell you what the big difference is. The guy that gets caught speeding is witnessed by a police officer. The evidence is the laser gun or radar gun. No officer is going to cite someone for speeding or breaking into a car because a neighbor had a log with five (5) or six (6) incidences where the neighbor was speeding or he saw the neighbor break into a car. Nobody gets cited or arrested unless there is probable cause. That is just the

standard that is lacking in this law. That is what is lacking. So it is different than any other crime that an officer witnesses and writes a ticket. In this case, the Humane Society does not witness the violation. They go off of a log and they write a ticket. In my opinion, that is not probable cause. It is different and let us all respect each other's opinion on this, but at the end of the day, it boils down to, "Do you think this is a bad law?" This is just for the public's information, but to amend this law still requires the same process as it is to do a new law. You still have to introduce a bill to amend. You still have to do a first reading, a public hearing, a committee meeting, and a final reading. That does not change. If it is a bad law, you repeal the bad law and you introduce a new law. It takes the same time, the same process. This process here has helped the dialogue with the community and the Council, but the amendment process is no different than introducing a new bill process. So let us clean it up and do it right. Councilmember Kagawa.

Councilmember Kagawa: I did not just look at the three (3) cases that went to court and lost and said, "That is how it is going to happen." You also have to look at last week when the County Prosecutor Justin Kollar was here where he said that in Maui, in the last three (3) years, twenty-eight (28) fines and citations were issued. Out of the twenty-eight (28), three (3) pled guilty and twenty-five (25) got off the hook. Now the three (3) that pled guilty did not go to trial. We are talking about three (3) on Kaua'i that went to trial. The three (3) on Maui just pled guilty and probably said, "I do not want to hire an attorney." That is my thinking. "I am going to just pay my fifty dollars (\$50) and hopefully I can improve my dog so that I do not get another fine, because the fines keep going up." The other thing is that I am kind of disappointed that when we passed this Ordinance last year, February 5, 2014, we modeled the Maui ordinance because the Maui ordinance is the only one that has the educational component with the Humane Society and we marveled at their numbers. In 2013, the Maui Humane Society had sixty-eight (68) complaints. Basically, all of the sixty-eight (68) were resolved, except for two (2). Here we have seventy-one (71), which is close to sixty-eight (68), but instead of two (2), we have seventeen (17) citations issued. I think Maui knew that it probably was going to be hard to prove. That is why they tried to push the educational part and not issue a lot of citations. I think they put a lot of effort in it and that is why they had that low number, but as time went on, Maui, in the past two (2) years, issued twenty-six (26) citations; so an average of thirteen (13) per year and they are all unsuccessful, as we have heard. So modeling Maui and comparing our numbers to Maui's numbers is comparing apples to apples. They have basically the same process and I think they actually put in more effort than our Kaua'i Humane Society has by calling the dog owner more often than we do here. Here, I think we kind of collect the log and make a call, and if they do not answer, "Oh well, we issue a citation." I think Maui actually waits until they make that contact before they issue citations. Chair, I think this is a substantive change if we want to get KPD involved. Obviously with a flawed process, I think we have to cut those thirteen (13) cases that have been issued citations free and say, "We are sorry. We are not saying that you are not guilty, but we are going to keep your information. Should we get KPD involved, we will use all of that information as a starting point." I think the ones that go to trial are the lowest-hanging fruit, supposedly, right? You would think the ones that we issue citations are the abusers who have disregard for their neighbors. Chair, we have a starting point. I just think that the key will be how fast we can come up with the ordinance so that we can have that fear already instilled by residents that they need to be responsible and that there is something there. This law right here is definitely, for me, really flawed. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: Chair, you said that if it is a bad law, then repeal it, but I do not think there is any evidence that it has been a bad law. If it is a somewhat flawed law, it is better to keep the law going and amend it to make it better.

Council Chair Rapozo: That is a fair opinion. I just disagree with it. I think we each have our own opinions as to whether you believe it is bad or not. The solution for a bad law is repeal. The solution for a not bad law is an amendment. We just have a difference of opinion and that is why it is on the table. Councilmember Hooser.

Councilmember Hooser: Good people can differ.

Council Chair Rapozo: Correct.

Councilmember Hooser: I think the solution to a bad law is to replace it, not repeal it. Whether we are going to replace a bad law for breaking into cars—we do not just repeal it. I do not think that this is a bad law at all. Every law can be made better. There is no question about that. Laws are a living process. Things change year-to-year; circumstances change; and technology changes. If this law is working, there is no question about that. If “working” is defined as neighborhoods are quieter, this law is working. There is no question in my mind. If any Councilmember wants to change it, then they should submit that and not just repeal it. Again, you do not stop laws breaking into cars. You do not repeal that, and then wait around for months and months before somebody decides that they want to submit another law, which may or may not be better than the first law. Thank you.

Council Chair Rapozo: Again, I think we are talking apples and oranges when you are talking about breaking into a car and barking dog, which could be caused by an animal or a sound. Again, I consider a bad law that if this Council has knowledge that potentially innocent people are being sent through the court process, forced to take a day off of work or hire an attorney; only to go to court because we cannot prove it and get sent home with the bill and a lost day of work. That is a bad law. For us to sit here and say, “I know that is happening, but I am going to allow it to continue because I think some law is better than no law.” That is not fair to that person who gets the ticket that may be innocent. If you repeal the law, then the tickets stop. If we decide to receive this, the Humane Society continues to issue citations on a bad law. How can we allow that to happen? That is my opinion. What it will take to put in a new law—to me, the only way I will support...I learned my lesson. I supported the Barking Dog Bill because I thought that the Humane Society was going to verify and validate the logs. I thought that they were going to send someone out, following a trend that was created by these logs. If somebody’s house every night at 6:00 p.m., 8:00 p.m.; 10:00 p.m.; 12:00 a.m., or 2:00 a.m. that there is a trend that these dogs are barking incessantly during these periods of time—I thought that someone was going to validate that before we issue a citation saying, “You need to go to court.” That is what I thought. Well, now I know differently that they look at the log and as long as the log is complete with the name, address, phone number, date, and time, “Hey, we are going to write a ticket.” Imagine if you were the recipient of a ticket and your dog did not bark incessantly. Imagine if you had a ticket for a crime you did not commit. Is that fair? I do not think so. I think we facilitate that process if we keep the law on the books. That is just my take. Councilmember Yukimura.

Councilmember Yukimura: The Humane Society did not cite in one case because they felt that there was no justification for it, so the Humane Society is verifying whether there is a real problem or not. If you are concerned about the potentially innocent person who does not have a barking dog, what about the innocent people who have to live by an actually barking dog? There are many of them. There are one hundred seventy-eight (178) testimonies in favor of keeping the law in place. What about those people? Would it not be better to keep this law that may be a problem for about fifteen (15) people and change it if it really needs to be changed? But to first verify that that is the problem? That case that was the last case that Councilmember Kagawa mentioned that Justin Kollar said we lost in court—the witness was here. I do not know why she was not in court and why the Prosecutor did not call her as a witness. So it may not be the law. It may be that the Prosecutor does not yet know how to prosecute the law effectively or the judge does not yet know how to apply the law. We are looking at ways to do this efficiently so that we do not overburden police, who have a lot more life-threatening problems to deal with. We are also trying not to overburden the Humane Society, which we will have to pay if it takes a lot more of their time. This is part of animal control. So we are all looking for an efficient way to address this. A law that addresses eighty percent (80%) of the problem is something that should stay in place while we look to see how we can better amend it.

Council Chair Rapozo:

Councilmember Kagawa.

Councilmember Kagawa: I just wanted to correct my first statement about Hawai'i island that they do have an educational approach for the first complaint, and then after they go out and speak to the dog owner...I guess the humane society goes out and speaks to the dog owner, offers the information, and then the second complaint on goes to the police. I told you about those twenty (20) calls per month that Hawai'i island says they get on average. So they get about two hundred forty (240) calls to the police department. Basically, according to Councilmembers "Fresh" and Council Chair Kanuha, they said that Hawai'i island is failing miserably on their Barking Dog Ordinance. It is a tough problem to fix. There is no doubt. We can all sit here and suggest things, but we have to hammer out the details with the police department and the Humane Society. We need a cohesive effort in order to see what we are going to focus on. Are we just going to go after low-hanging fruit? Hopefully that will set an example for the rest of the community that if you are a reckless neighbor who has no disregard for your neighbors that there is a consequence. We need to think it out. We cannot just pop up ideas because we will run into the same problem. Thank you, Chair.

Council Chair Rapozo: Like I said, there is no validation and no verification, which is my concern. I think Councilmember Yukimura talked about the majority of people that are being bothered by dogs versus the few that may be inconvenienced. If a bill that I support will send some innocent person to court, no, it is not worth it. It is not. I do not understand why there is no component in here and that is what I am looking at for the new law. Whether it is the police or the Humane Society, you have to do an investigation. You have to speak to the neighbors. There is always that civil recourse, too. You can sue. As Ms. Tamura's neighbor did, sued her in civil in court, and four thousand five hundred dollars (\$4,500) later for Ms. Tamura and her family taking time off of work. Ms. Tamura had to go get the witnesses in the neighborhood to go come up. If the Bill had been in place and the law had been in place and the Humane Society had gone down there absent an investigation and just looking at the log, she would have gotten a

ticket. She would have had to go to criminal court. The gentleman who filed the complaint gets to use the Prosecutor for free. She loses her time and her money and the result is "not guilty"; versus an investigation where the Humane Society or the police department goes down to her neighborhood and talks to the neighbors, and the neighbor said, "Their dog barks every so often, but it is not incessant." There is no probable cause to issue a citation. That is what we are supposed to do. We are talking about people's lives. A dog owner and a dog owner neighbor—everybody has a right. Yes, I have a right; we all have a right to have peace and quiet. A dog owner has a right, too, to have some kind of due process, not just because your neighbor said your dog barked that you are going to get a ticket. "Now you go prove it in court." That is not how we do things. Councilmember Hooser.

Councilmember Hooser: I am not sure if I heard the example correctly. The example you just used where the homeowner had to go to civil court was sued, had to spend a lot of money on attorneys to fight it in court, but the dog owner won.

Council Chair Rapozo: Correct.

Councilmember Hooser: Under our law, the same circumstances would have happened. The dog owner would have won, according to history. That is what Councilmember Kagawa keeps saying.

Council Chair Rapozo: No, that is not what I said.

Councilmember Hooser: No, but what I am saying is that in civil court, the dog owner won, but spent a lot of money to win.

Council Chair Rapozo: Correct.

Councilmember Hooser: Under our system, given the arguments that have been laid out here, the dog owner still would have won and it would have cost the dog owner a lot less money and a lot less heartache, so therefore this law is a better law than...

Council Chair Rapozo: I do not know why the dog owner would have spent less money. Whether it is in a civil or criminal court, she still would have to take off of work and pay her attorney. She still has to pay the money. The difference is that...

Councilmember Hooser: I do not want to put anyone in a position of explaining how much money they have to spend, but it seems like the results would have been the same and this would have been a simpler process.

Council Chair Rapozo: No, the result would have been the same, "Not guilty." The cost would have been the same, four thousand five hundred dollars (\$4,500) under this flawed law for the dog owner. I am saying that if our law required verification of the crime, like any other law does; if our law required the police or the Humane Society to go down there and verify that the dog was bark incessantly and if they could not, and I do not care what the log says, she would have never gotten a ticket. So she would have never had to go to court, never had to hire an attorney, and she would have saved four thousand five hundred dollars (\$4,500). The problem here is not so much that...I agree that we need a law, but before we send someone off to court, we have to prove that there is probable cause

that the crime occurred, and it is not on the paper of a neighbor who may be upset with their neighbor. That is all I am saying. This law does not do that. This law does not require that. That is the flawed law. The longer this law stays on the books, there will be more cases of people getting citations that have to take time off from work, go to court, and get found not guilty because we cannot prove that the dog was not barking because of a mosquito, fly, or toad, as someone said, in the food. That is the reality of it. Dogs bark. Until you can prove that the dog is barking to piss off their neighbor, you are not going to get a conviction. That is just the sad reality. So why not make the law where the law enforcement agency, whoever it is, is required to validate the complaint like we do with any other complaint. You would think that is simple, but this law does not allow for that. That is why I am saying it is a flawed law. Councilmember Yukimura.

Councilmember Yukimura: I think there is a discrepancy or difference in understanding about whether the Humane Society investigates or not, so I would like to ask if we could have the Executive Director come forward so that we can understand what their process is.

Council Chair Rapozo: She explained the process at the Committee Meeting. She said that they analyze the log.

Councilmember Yukimura: I believe that they do check with neighbors.

Council Chair Rapozo: I do not believe they do.

Councilmember Yukimura: Well, could we have her say?

Council Chair Rapozo: Is she here?

Councilmember Yukimura: Yes.

Council Chair Rapozo: Okay. Any more discussion? I am going to suspend the rules and have Penny up. Then we are going to take public testimony. Is there any other discussion before I do that? If not, I will suspend the rules with no objections. Thank you for being here, Penny.

There being no objections, the rules were suspended.

PENNY CISTARO, Executive Director of the Kaua'i Humane Society: Penny Cistaro, Executive Director of the Kaua'i Humane Society. When we have the ability to make contact with the dog owner, we do. A lot of times we only have their address and we do not have a phone number. We do make contact in some cases with the neighbor and sometimes other neighbors are involved in the process as well. There have been cases where the neighbor will contact us to state that the person making the complaint is exaggerating the situation, so it varies from case-to-case, but there are a number of complaints where we do not have a contact phone number for the dog owner.

Council Chair Rapozo: On the cases that the people get cited, what is the validation or verification process?

Ms. Cistaro: Reviewing the log sheet and looking at the excessive barking on the log sheet. It usually is upwards from thirty (30) minutes to one and a half (1.5) hours.

Council Chair Rapozo: Right, but anything beyond the log?

Ms. Cistaro: Yes.

Council Chair Rapozo: What is beyond the log?

Ms. Cistaro: What is beyond the standard in the Ordinance.

Council Chair Rapozo: I understand that, but aside from the log, is there any other verification or validation of the complaint?

Ms. Cistaro: There can be if there are...

Council Chair Rapozo: Go ahead, I am listening.

Ms. Cistaro: Well, it depends on if we have contact with other neighbors. We have spoken with other neighbors, but the citation is issued based on the log sheet and the verification from the person completing the log.

Council Chair Rapozo: Do not take my questions or my criticisms of the programs as criticism against the Humane Society. That is what you folks were asked to do.

Ms. Cistaro: I understand that.

Council Chair Rapozo: My problem is that, and as someone that supported this Bill, that was something that was an oversight on my part and I should know better that we should have had some validation or verification because I think you would agree that no one should get a ticket because someone said they did something. That, to me, goes against any kind of law enforcement process. You just do not do it. That is why we have civil court. The "he said, she said" belongs in civil court. Probable cause belongs in criminal court. That is the battle that I am having right now.

Mr. Cistaro: The discussion that we had when we were introducing the Bill was that it is very difficult, short of someone, whether it is from KPD or the Humane Society, sitting in front of someone's house at a specific time for ten (10) minutes or twenty (20) minutes within a thirty (30) minute period to validate the barking. The logs show, for the ones that we have cited, variations in time. It can be in 5:30 a.m. or 7:00 p.m., but it is a wide variety of times.

Council Chair Rapozo: That is why every speeder on the island does not get a ticket because you cannot put a cop on every street to catch everybody. That is just the way it is. Not everybody is going to get a ticket.

Ms. Cistaro: Right.

Council Chair Rapozo: But the ones that are caught will. Right now, what is happening is that we are not investigating to the point where we can have a third party validate the complaint, but were issuing a citation, which forces them to go to court. That is my only concern.

Ms. Cistaro: Yes.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Penny, what would it take to have someone go and validate? Would it be workable for the Humane Society to do the job?

Ms. Cistaro: Not with our current resources and staff to send somebody out to sit at various times.

Councilmember Yukimura: Okay, but if you had to do it, it would be just with the seventeen (17), not with the whole number of complaints, so that might be a lesser field.

Ms. Cistaro: Yes.

Councilmember Yukimura: On the one complaint where you did an assessment and concluded that a citation was not warranted, how did you do that assessment?

Ms. Cistaro: That was where the other neighbors agreed with the dog owner because the dog owner contacted us and said, "My dog barks, but not to this level," and the neighbor substantiated what he said, so we had three (3) other neighbors contact us and say that the dog is not a problem in the neighborhood.

Councilmember Yukimura: So where a dog owner will respond and contact the Humane Society and be in communication with you, there is a chance to solve the problem at that level?

Ms. Cistaro: Yes.

Councilmember Yukimura: There are other cases where you have communicated with the dog owner and there has been no communication back.

Ms. Cistaro: Correct. There had been attempts to make contact with the dog owner when we do have the phone number, but the ones that were cited were primarily people that we did not have contact with. One of the ones that was cited that is the first two (2), we had a lot of communication with the dog owner. For the second one, I think the one that was from July 22<sup>nd</sup>, we had a lot of contact between the complainant and the dog owner.

Councilmember Yukimura: These are the cases that went to trial.

Ms. Cistaro: Yes.

Councilmember Yukimura: Has the Humane Society been consulted on the cases by the Prosecuting Attorney?

Ms. Cistaro: With the exception of the one that went on the 22<sup>nd</sup>, no.

Councilmember Yukimura: Okay. Thank you.



Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you, Penny. It is amazing how in a year we forget things because I am looking at the Committee Meeting minutes and it was not Chief Asher here, but it was Alejandro Quibilan that was here at the Committee Meeting.

Ms. Cistaro: Okay.

Councilmember Kagawa: Do you remember him saying that during afterhours that KPD would be involved if they had an option of sending an officer?

Ms. Cistaro: Yes.

Councilmember Kagawa: Two (2) weeks ago, we had Chief Asher saying that they are happy now because they do not have to do anything. Did they forget that a year before that they said that they would be involved if they had the manpower?

Ms. Cistaro: You would have to speak with them. I cannot answer for KPD.

Councilmember Kagawa: I thought you were a team on this barking dog situation.

Ms. Cistaro: I know that afterhours KPD states that if the complainant feels that the dog is barking unusually in the middle of the night, that they would go out if they thought there may be a crime being committed like a trespasser or something happening on the property. But for a routine barking dog complaint, KPD was not responding. They refer the person to contact our offices in the morning.

Councilmember Kagawa: I have another question, Penny. I think what possibly sold Councilmember Rapozo and almost sold me to vote yes on it a year and a half (1.5) ago, but I did not, was that we were praising Maui's numbers from 2013 where they had sixty-eight (68) complaints and only two (2) citations filed. Basically, let me just read the success because it is just amazing. There were sixty-eight (68) complaints in 2013: four (4) were resolved after the initial packet was sent, thirty-four (34) were resolved after the second complaint, nine (9) were resolved after the third complaint, and two (2) went unresolved. Those are unbelievable numbers that really look impressive, but as you ran this program for a year, was it kind of concerning to you that we were getting away from Maui's numbers? We are at seventeen (17).

Ms. Cistaro: That is over a fourteen (14) month period, so it is not...

Councilmember Kagawa: This is only after one (1) year.

Ms. Cistaro: Yes. Maui's law right now is being amended because they are having difficulties within their court system, because they are issuing citations where there are multiple dogs on the property and they cannot identify which dog is actually doing the barking. So they are amending their law to

state that it is any barking from any dog on the property. Maui has been struggling with their ordinance as well.

Councilmember Kagawa: Last of all, this has been a tough issue and I just want to thank you for the work you have done over this time. The success and whatever is the Council's fault, and the group. They tried to address a problem, but if it is not working, it is not your fault.

Ms. Cistaro: Actually, for the people who have had it resolved, we take the seventeen (17) out and they are happy. Their cases have resolved.

Councilmember Kagawa: Unfortunately in the United States of America, we have something called "due process" that as much as we want to do good in the community, we have to look at the defendants' side as well. That is why lawmakers need to do fair laws for all. Thank you, Chair.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: Hi, Penny. I had a question and I tried asking it the last time and I do not know if earlier we got a clear answer, but do you need this County law to continue to do the educational part that the Kaua'i Humane Society does?

Ms. Cistaro: No, we do not. As I answered last time, we will continue to send out the educational packets to the dog owner and let them know that we have received a complaint. We will modify the letter to indicate that there is not the citation process, but we will still be sending out the same educational materials.

Councilmember Kaneshiro: Okay. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Penny, apparently based on what Councilmember Kagawa said, Maui's process allows for a first, second, and third complaint before there is a citation.

Ms. Cistaro: I have not read their ordinance since one (1) year ago.

Councilmember Yukimura: I am wondering whether the Humane Society could modify their process to send out second and third complaints or even find out from them how they have been working their complaint process if it seems to resolve a greater percentage; although, eighty percent (80%) is a pretty good resolution process. We do not need a change in the law to do that if you were to give a second and third complaint before you go to a citation.

Ms. Cistaro: If we went through the process multiple times?

Councilmember Yukimura: Yes.

Ms. Cistaro: We could.

Councilmember Yukimura: And even include something that says to the dog owner, "If you feel you are being unfairly criticized, please contact us so that we can find out your reasons and work with you on it," something like that, that gives an opening for them to contact you and see if it can be resolved.

Ms. Cistaro: Yes, we can do that.

Councilmember Yukimura: That is possible, too.

Ms. Cistaro: Councilmember Kagawa, you keep quoting a fifty dollar (\$50) fine the first time, but it is actually thirty-five dollars (\$35). The last time in Committee, I explained that you were working off of the wrong ordinance. You were working off of a draft. It is thirty-five dollars (\$35) for the first citation.

Councilmember Kagawa: Thank you.

Councilmember Yukimura: There has been a lot of testimony that the law has been working even before people filed complaints or after people filed complaints. Is that your experience, too, as the Humane Society? Are you are aware of cases where just the existence of the law has helped?

Ms. Cistaro: Only feedback. We have not had neighborhoods that we knew were problematic that are no longer problematic. It is just the feedback.

Councilmember Yukimura: Okay.

Ms. Cistaro: Some of it came from Letters to the Editor, people that have spoken here.

Councilmember Yukimura: Yes, we have been getting a lot of that. Thank you.

Council Chair Rapozo: I got a bunch of E-mails that said, "Just because we started talking about the Bill to repeal, the dog started barking again," like they watched this show or the dogs read the paper.

Ms. Cistaro: It is entertaining.

Council Chair Rapozo: I say that in jest, but yet, we get a lot of E-mails and a lot of it is personal attacks and there is no need for that in this. Really, it comes down to the fact that we all want to do what is right and what is fair. Penny, you are there, so you are the person that is going to get the question, but it is no way intended for you as the Director of the Humane Society, but imagine if the cops showed up at your door one day and said, "By the way, your neighbor saw you speeding up the road three (3) times, so here is a ticket for speeding." Can you imagine that? Then you take your day off from work, go to court, and say, "Your Honor, I was not." Then the judge says, "You are not guilty because there is no proof." Imagine that. That is what is happening.

Ms. Cistaro: I understand.

Council Chair Rapozo: Thank you. Any more questions for Penny? I do appreciate it. The more we ask you, I know at some point you are going to come back with a, "Yes we can, but it is going to cost." I understand that, too, because to send people out and do what I want you to do cost money and I understand that. I am willing to support that, but we need it to be done properly so that when it does go to court, we have a chance and that we know that the person getting convicted is someone that could not take care of their dog. I fully support that. Thank you. Any other questions for Penny? If not, thank you, Penny. Do not go far. For public testimony, I am just going to say that as you come up, I know it will be an emotional issue for some of you and as I read some of the minutes or went over this last meeting, I am going to ask that you direct your comments to the Chair, not to any Councilmembers or no personal attacks on Councilmembers. Just direct your comments and your testimony to me as far as your position on this Bill and the repeal.

Ms. Fountain-Tanigawa: The first registered speaker is Bruce Hart, followed by Douglas Henry.

BRUCE HART: For the record, my name is Bruce Hart. I thought before I came up here that I knew what I was going to say and I even wrote it down. I look at all of you and I appreciate the job do you. The whole issue here on both sides is valid. If I had to go through this process and I knew that whenever I got in court as the complainant that I would lose, I do not think that I would go through the process at all. Speaking from a position as the complainant, I do not think on the other side that the law is worthless, but you know how it is really being effective? It is intimidating the dog owner. They do not want to go through the hassle. All of the burden is on the dog owner at this point because as you have said, all that has to be done is fill out a log. That is a valid point, Council Chair. Are we going to place all burden on the complainant, as was spoken by Councilmember Yukimura and Penny just before I came up? This is a really tough one to prove, and not only barking dogs, but parties, which I have tried to prove. How do you convince someone, KPD or anyone, that they were laughing, screaming, and yelling before you got here? I do not know other than a witness. I am in agreement with Council Chair that there has to be some kind of proof other than just a log. I thought I was, but I am not going to speak as to repeal or not repeal. The law needs to be improved. I think that is clear on both sides. If I had all the time you folks had, I could tell you stories that would make your hair stand on end about what I have been through. When I first came and first sat down in this chair almost one (1) year ago, I said what we really need is a comprehensive noise ordinance that addresses all types of noise, whether it is a nuisance noise or disruptive noise. Whether to repeal or not to repeal, or move this Bill and amend it within a comprehensive noise ordinance is for you guys. Any questions?

Council Chair Rapozo: Thank you, Mr. Hart. Councilmember Yukimura.

Councilmember Yukimura: So it is not really possible to amend the Bill that is before us today, so the question I have is do you feel we should repeal the Bill, and then make an amendment, or keep the present law, stop the repeal Bill, and then propose an amendment?

Mr. Hart: JoAnn, I knew when I came up here that you were going to ask me that question. I am not going to answer it.

Councilmember Yukimura: All right. That is fine.

Mr. Hart: The repeal or not to repeal is up to this Council.

Council Chair Rapozo: You said that already.

Mr. Hart: Okay.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: You made that point very clear. Thank you. Any other questions for Mr. Hart? If not, thank you, Mr. Hart.

Mr. Hart: One last thing—I am praying for all of you and I mean that seriously.

Council Chair Rapozo: Thank you.

Ms. Fountain-Tanigawa: The next speaker is Douglas Henry, followed by Alice Parker.

Council Chair Rapozo: Thank you, Mr. Henry. Please state your name for the record.

DOUGLAS HENRY: Douglas Henry. This is the first time I have been up here. I had to give up my golf game today so that I could come down here, so you know how important this is to me. Several years ago, I was the victim of a man with five (5) barking dogs that barked incessantly, I would say 24/7. We went through the whole process of talking to the owner. He said, "Dogs bark. That is their nature." We talked about giving them bark collars, but he refused to do that because "it was inhumane." All the neighbors complained. We called the owner of the house because these guys were renting for one (1) year. We called the owner and he said to call the police. We called the police and they said, "We do not respond to barking dogs." I called the owner back and he said that we will call the Humane Society. We called the Humane Society and they said, "We do not respond to barking dogs." We had no recourse. There was nothing we could do to get this guy to stop his dogs from barking. We lived with it for one (1) year and the owner did not renew the lease and that was the end of him, but for that one (1) year, we had to actually sleep in a different part of the house so that we could get to sleep. I think you are missing the point on several things. The fact that the Ordinance is there, there is an incentive for the owner to do something. If there is no Ordinance, then it is like, "Tough luck, Pal. My dogs bark. What are you going to do about it?" If there is the Ordinance there, there is some kind of recourse for the person that is being abused by the barking dogs. I hope you will keep the Ordinance. If there is a problem with it, fix it. It is working in my neighborhood because ever since the Ordinance went in...I live in Kalāheo and it has quieted down considerably. So you have to take that into consideration, too, is that what you are not seeing with all the complaints is that it is all being taken care of before it ever gets to the complaint stage. That is it for me.

Council Chair Rapozo: Thank you. Questions? Councilmember Kaneshiro.

Councilmember Kaneshiro: Did you ever consider a private nuisance lawsuit against the dog owner?

Mr. Henry: No, I never considered that. Like you say, it would be too costly or too much of a problem. It never occurred to me to do something like that. I know there is a rental contract that talks about disturbing your neighbors in the rental contract that the owner can evict that person if he is doing something that disturbs the neighbors, but the owner would not do it. Again, we just could not do anything about it except live with it until he moved out.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you, Douglas. Residential or agricultural lot?

Mr. Henry: I live in Kalāheo in the neighborhood.

Councilmember Kagawa: Residential area?

Mr. Henry: Yes.

Councilmember Kagawa: What kind of dogs? Big dogs?

Mr. Henry: He had five (5) dogs and it ranged from the biggest to the little bitty one. It would be the little bitty one that any noise, anywhere would set him off. Then of course he would go and the other ones would just orchestrate right in.

Councilmember Kagawa: So is it a fenced-in area and they just run loose?

Mr. Henry: Yes, they have a chain-link fence or hurricane fence, so any car that drove by or any noise would set them off.

Councilmember Kagawa: I understand.

Mr. Henry: I have a bed and breakfast across the street and they would come in at 10:00 p.m. and then all of the dogs would be out there barking. They get up at 6:00 a.m. and go out to tour the island and the dogs would be out there barking.

Councilmember Kagawa: Did you have a dog?

Mr. Henry: Do I have a dog?

Councilmember Kagawa: Yes.

Mr. Henry: No.

Councilmember Kagawa: Okay. Thank you, Chair.

Council Chair Rapozo: I have one question. Based on the scenario you just gave, do you realize that this law would be meaningless to your situation?

Mr. Henry: I do not know if it would be meaningless.

Council Chair Rapozo: It would because the dog was barking because of people, other dogs, and sounds. This Bill would not apply to your situation, just so that you understand. That is why I am saying it is a bad law.

Mr. Henry: Yes. Well, at least the Ordinance would be there and we would have some kind of recourse to try to get...

Council Chair Rapozo: What would be your recourse?

Mr. Henry: I do not know. Maybe the Humane Society could go out and talk to the guy and maybe he would straighten up his act.

Council Chair Rapozo: Okay. That is going to continue. Even without the Bill, that continues.

Mr. Henry: Well, it sounds like you want to repeal the whole thing, so then the guy is just going to snub his nose at us. "Tough luck, pal. Do you something about it."

Council Chair Rapozo: I guess you are missing my point. The law is for dogs that bark for no reason.

Mr. Henry: Well, this was nuisance barking. This was not just because somebody came on his property.

Council Chair Rapozo: I think that is what you just said. You said that the dog heard a noise and he barked. The bed and breakfast people came in at 10:00 p.m. and they barked. People walked down the road, they barked. That is what dogs do. I am sorry to tell you that. I hate to disappoint you.

Mr. Henry: Well, guess what? Everybody else around the circle had a dog and none of them barked when those dogs came. It was him and his dogs...

Council Chair Rapozo: My point is that this Bill, this law, would not apply to your situation. I guess that is all I am saying.

Mr. Henry: Well, maybe not, but it is actually working in the neighborhood because the dogs that were barking before the Ordinance are not barking now.

Council Chair Rapozo: Okay. They are probably the ones that watch this show. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Alice Parker, followed by Robert Cremer, Jr.

Ms. Parker: Alice Parker, here to bark again. I wanted to suggest to the Humane Society that since they issue licenses now, perhaps they could cross-reference the license by name, say of the neighbor who has the barking dogs, and maybe get a telephone number that way. Also on the license, I believe you give your phone number, too. There must be other ways to get the phone

numbers of the objectionable owners to barking dogs. The other thing is that I had a rescue dog who I trained not to bark so well that when I came in one day, and I had two (2) men installing a security doorway for my screen door, I said, "Hello doggie." They said, "There is no dog here." There was Kapena lounging against the back door. He had met them before so why bark? Anyway, that same dog some years later, my neighbors told me he was crying during the day, so I stayed home twenty-four (24) hours and he was crying. It was time to put him down because he was in pain. Anyway, we do need a law. It would be nice if we could just keep this one with until you get the new one. We do need a revised law that is enforceable and we definitely need something to help against barking dogs. Thank you.

Council Chair Rapozo:

Thank you, Ms. Parker. Next.

Ms. Fountain-Tanigawa:  
followed by Robert Girald.

The next speaker is Robert Cremer, Jr.,

ROBERT CREMER, JR.: For the record, my name is Robert Cremer, Jr. We all know this law is a bad law, whether you are for it or not. We all have to take a step back because we know it is a bad law. We all need due process as one of our rights as a United States citizen. Due process. I cannot be guilty for a dog thing and be fined when a person in the community gathered evidence against me. These last couple days and weeks in The Garden Island, people are saying, "Let us amend the law and let us have somebody record it visually or vocally." How is this going to ever be concrete evidence at all? Never, because one you either have to be there to do it or be away and not see what is going on when the dog is barking. The law is bad. Let us repeal it and find a way, because there are bad dogs that are barking excessively. I can bet you that ninety percent (90%) of the dogs that is barking is in an inhumane way because it does not have water, it is tied in the chain in the hot sun, or has no type of exercise at all. I am not going to say that we do not have dogs that are barking. I have a friend who is a hunter who has a wife. The dog became her pet. He brought the dog hunting several times with us, but the dog was making no issue to go hunting. He wanted to get rid of the dog, but she would not let him get rid of the dog. Now, they are in the process of finding a home for their dog because the neighbors are complaining. She and her kids will not have the dog there. What are we going to do? We are going to have a bad bill and a bad law make people get rid of their pets, which is also working dogs. I can go so deep that I can hurt people's feelings today in here, but I am not going to do that today. I actually was going to come here and not sugarcoat things, but it will not change anything. The law is bad and we all have to understand that, whether we are for it or not or whether we created the bill or not. We have to look at it and swallow our pride sometimes as a human and say it is a bad law. Let us repeal it and let us find a better way to do this. Like I said, I was going to come here and not sugarcoat on things today. I have it all written down here. After I saw the man that had the problem, Mr. Parks or whatever his name is, come here and say that he does not know what to do and that you guys make the decision. I am going to tell you the same thing. You know what is right.

Council Chair Rapozo:

Thank you. Next.

Ms. Fountain-Tanigawa:  
by Matt Bernabe.

The next speaker is Robert Girald, followed

Council Chair Rapozo:  
name for the captioner and you can proceed.

Thank you, Mr. Girald. Please state your



ROBERT GIRALD: My name is Robert Girald, resident of Puhi. Thank you, Council Chair and Members of the Council for giving me the opportunity to speak. I, too, like the first speaker came here and wrote out what I wanted to say. After listening to the discussion now, I am more than frustrated and confused because of all the different points. I have tried to understand how a bill could have been written back then, approved by people in this Council; I think there were four (4) or five (5) of you that were here. Now we have got all of these *pukas* and all of these problems. It is really frustrating for me. All I know is that we can say this is a bad law and my thinking is that it may have bad points. I think it was very well articulated today that there are bad points and that can be improved. Repealing it altogether is sort of sending a wrong message to the public. Basically, you are going to be saying now that we do not have a law, so barking is another issue again. Barking has been something way before all of our times. Barking dogs have always been here. I as a young kid used to have my own dogs when I used to hunt pig. I understand that certain ones you cannot control them, but you are going to usually hear noise from pig dogs when they are feeding or taking them out for a hunt or maybe a cat comes around. But most of the time they are quiet. It is these smaller dogs that are in neighbors' yards that yap, yap, and yap and drive you nuts. My neighbor's dog was four (4) months old and every time I would go outside in the yard, that dog would bark until I left. Even if I went in the house I could hear their dog. It was continuously. I talked to the owner and they said that it was a puppy. Six (6) months later it was still a puppy. I got my water hose and I would hose that dog down every time because they tie it outside and the dog is frustrated like anybody else of not having activity. I would hose it down every day and finally it stopped. That is how I trained my dogs when I had pig dogs. The point that I want to really emphasize here is that my fear is that I think we should not tell the public now, "The law is bad. It is out. It is there. It is repealed." What do you do in the mean time? I think we are sending a bad message to the public. I think that this Council is the leaders of our County. When you do something, you need to look at what the long-reaching impacts are to the public. Barking dogs will not stop.

Council Chair Rapozo: I have to stop you there. You can come back if you want. Councilmember Kagawa.

Councilmember Kagawa: Robert, repealing it would mean going back to the drawing board and trying to devise a good law. Did you also hear, too, that every county in the State is struggling with their barking dog law? To expect Kaua'i County to be the only one succeeding...we are only human, too. We can try our best. It does not mean that we are going to be perfect the first time. I do not know if that can ease your frustration. It is not like every other county is doing well and Kaua'i is the only one that is not doing well in the barking dog law area.

Mr. Girald: Thank you.

Ms. Fountain-Tanigawa: The next speaker is Matt Bernabe, followed by Marj Dente.

Mr. Bernabe: Matt Bernabe for the record. I am all over the place. I have all kinds of things written down, so I am going to start with this first. I train my dog to bark. I have four (4) motorbikes, trucks, and all kinds of fishing poles. My neighborhood is targeted and my dogs have saved neighbors' work equipment from being robbed and the thought of one of my neighbors moving and having one of these people move in that does not like dogs—to me, that is what I am

hearing that, "I have a bed and breakfast and they come in at 10:00 p.m." That dog is being provoked by that bed and breakfast. If anything, that should have gone down as a bed and breakfast nuisance under that testimony. This is an exact reason why earlier the audit on the Humane Society is needed because it will unearth all of this stuff. It will show us the track record of these guys of how long they keep a dog or if they are even going...the fact that they are giving the citations to the people they are not contacting...you cannot even get a court summons like that. You have to be face-to-face, I believe, right? You show up, "Here is your summons." I think that is how it should be. I will jump over a lot of my stuff that I want to talk about, but maybe I will get there in my second round. So we are going to solutions. County rangers—by definition, they have to deal with the dog component because they go to parks and have to deal with dogs. Why are we not training our County rangers to take this position? That is the solution here. As far as Maui goes, how does Maui verify which dog is the barker if that is what their problem is. That means somebody is showing up and looking at what dog is barking if that is the problem. The fact that this is speculating that it is working here—I do not buy that at all. As far as the County rangers or our KPD officer goes, it should be a noise ordinance and when they respond to the noise ordinance, either day or night, there should be a component in there that they refer them to the Humane Society. That is when the Humane Society should be kicked in. "Maybe somebody is dead next door. The dog was barking for one (1) hour. Come over officers." Okay, they show up. "It is just an old lady with her Shih tzu. We are going to refer you to education." Maybe some resources. We have a County ranger that we erected after that lady got ran over on the sand. I think we should utilize that branch a little more. I will go and clarify my thoughts. I am keeping it clean today. I will be back.

Ms. Fountain-Tanigawa:  
Anne Punohu.

The next speaker is Marj Dente, followed by

MARJ DENTE: Thank you. I appreciate this opportunity to testify. I do want to point out that The Garden Island was mistaken on their report of the last meeting of January 15<sup>th</sup>. They said that the testimony was half-and-half. My records, as you all know, I take really good notes: sixteen (16) said do not repeal, with some saying maybe make amendments; nine (9) said to repeal, but consider a better law; one (1) was undecided. That is sixty-two percent (62%) who testified at the last meeting that said "do not repeal" or "amend it." So if The Garden Island is here today, please make sure your reports are accurate. I did send in my testimony by E-mail this morning and I am not going to read it, but I do want to suggest to people in the audience who are having problems with dogs that twenty (20) years ago, my neighbor and I started a neighborhood watch, which it is still viable, up and running. We started it because we had a number of burglaries. Fortunately, that finally stopped after about ten (10) years. Most of the offenders have been incarcerated, so the problem does not exist. But we have two (2) other problems...major...I get them all the time by phone or E-mail. One is wild pigs. We cannot do anything about the wild pigs, except construct fences, which I just spent three thousand dollars (\$3,000) doing that last week. The other is barking dogs. It comes up all the time. But because we started the neighborhood watch, and I highly recommend this to everyone in this room, people now have our names and our phone numbers, and if some allow us, we have E-mails. We can easily get in touch with our neighbors for any reason at all, and in this case, barking dogs. I have to say that our neighborhood is very friendly to each other. We wave to each other when we walk or ride down the street. Even if we do not know them, we make a point of being friendly this. This is Kaua'i's style. It is hard for newcomers who come here that do not understand that hunting dogs are trained to bark. It is hard

for us to know that, but with more education in the paper regarding this Ordinance or lack of or a better one, please educate. Ethnic groups here have stability. They do hunt for their family. They do prepare and eat the meat. This is important. I am not against hunters. I support hunters in every way. So more education on the part of the Humane Society, police department, the Council, The Garden Island, or whomever—start neighborhood watches. Be friendly to one another. Get to know your neighbors so that if a problem comes up, have them over for a drink. Thank you.

Council Chair Rapozo: Marj, you have a question from Councilmember Yukimura.

Councilmember Yukimura: Hi Marj. Thank you for your testimony. What is your position with respect to the Bill to repeal?

Ms. Dente: I do not think that law should be repealed. If it can be fixed legally, without too much trouble, I understand that it might be more trouble to fix it than to write a new one, but we should not be in the void. The law should exist until a new one is written if it is cheaper or whatever, or fix the current one, absolutely. I do not think it should take a lot of time. I think your basic research has been done. You just may need to fill up some loop holes.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Thank you very much. Next speaker.

Ms. Fountain-Tanigawa: The next speaker is Anne Punohu.

ANNE PUNOHU: Aloha Councilmembers. I am Anne Punohu. I really want to thank Marj because she just gave some really excellent testimony. I do not know if you recall, but I was always against this Bill and I came to this Council Chambers to testify against this Bill in the beginning, originally. When I heard it was going to be repealed, I really wanted to come here and testify because I kind of just wanted to say that "I told you so," but I guess I will not say that. While we are on the subject of repealing laws, I think we are looking at setting a precedent and of course, as you may well know, there is another law that I am not going to be for repealing. We are bringing up other issues here where are we setting a precedent? Is this what is going to happen all the time we do not like a law? Are we going to repeal it? My main objection to this law is the fact that it causes bad blood between neighbors. It is not the Kaua'i way to do things. There is the civil case and there is also conflict resolution that I think is done through Kaua'i Economic Opportunity (KEO), which is another avenue, which I have not heard mentioned yet today, which I think is very good. Also, too, just trying to communicate with your neighbors is important. However, there was another issue that was brought up today, which was to scrap this for a comprehensive noise ordinance for the County of Kaua'i, which I think is absolutely needed. Over the years, we have a lot of noise on Kaua'i. We used to be a quiet island. I am a really grumpy person if I live next door to you because I do not like a lot of noise and it really irritates me sometimes and I snap out. It is not a good thing. I do not like the boom-chucks and I think they are way worse than any dogs barking. I like dogs barking. I think that dogs here are necessary because we have a lot of burglaries and I think a dog in a neighborhood is good protection for people. Because I have pretty much been here forever, dogs are part of our lifestyle and our community and they are friends and family as well. I see the law as being bad because it pits

neighbors against neighbors and it causes bad blood, like what you were saying, Mel. Here is my thing, am I for repealing this Bill or am I not for repealing this Bill? In general, I am not for repealing bills because I think it will start a very bad trend, which I think we would not want to go down that road. However, after listening to Marj, I think that a good idea would be to sunset this law while you work on something more comprehensive like a comprehensive noise ordinance. I am eventually for repealing this law. If we can do it without leaving a void like how it has been talked about...in general, I do not think that it is a good law. I never did think it was good law and I was never for it and I am not really for it right now. *Aloha.*

Council Chair Rapozo: Thank you.

Ms. Fountain-Tanigawa: That was the last registered speaker.

Council Chair Rapozo: Anyone else wishing to speak for the first time? Mr. Rosa.

Mr. Rosa: Good afternoon. For the record, Joe Rosa. I have been listening to the barking dogs and in my neighborhood, people come up to me and ask, "What do you think about this barking dog law?" I say it is ridiculous. I can ask member if you have a dog. Why do you have a dog? For the dog to be a watchdog and bark when he needs to bark. I have to use a different (inaudible). The Humane Society comes up here and tells you one thing and I do not hear things like I learned from the K-9 Core when I was in the Korean War from the outfit that we have to get attached to the K-9 Core dogs. You have to know the dog's bark as to the tone of their bark. There is a bark for when they want water or want to be fed or if there is a foe or something in front of you. I do not hear the Humane Society talk about that. Another thing simply, it can be cured if the Humane Society...sometimes they are so generous they give you free neuter or spay. Why do they not give out ear plugs for some of those people that need it? It is as simple as that. You can buy the cheap earplugs or the expensive, fancy ones if you want to. That will do the trick. As I say, when I used to work the nightshift, I would come home and there are kids in the neighborhood playing. I am not going to chase them away. I tell them, "I am sleeping because I work night time." The neighbor's dog would be yapping because she had a little Chihuahua. It would just yap and yap, but I did not go and bother them. I said to myself, "There is a way to beat this." I like to see the kids play and enjoy themselves. So at that time, I went down to Hale Kua'i and bought a set of earplugs. That solved the problem. It is as simple as that. Do not make a problem. A problem only becomes a problem when people make it a problem. Look at an area when people come in, sometimes there is only one (1) bad apple in the group. What about the other people that they are bringing to court to testify? They say, "It does not bother them." How can one (1) person confide in other people's happiness or enjoyment? They make simple problems that are not problems. They create the problem. In life, everybody has things that they object to. Like I said, I solved my problem simply by going to get earplugs. Try it. The Humane Society gives poop bags, gloves, and everything, so why do they not give them earplugs? That is all I can tell you people.

Council Chair Rapozo: Thank you, Joe.

Mr. Rosa: We should be friendly with one another.

Council Chair Rapozo: I like your idea.

Mr. Rosa: I had a dog once, but I had it to watch and bark. Thank you.

Council Chair Rapozo: Hang on, you have a question from Councilmember Yukimura.

Mr. Rosa: Yes, she always has problems.

Council Chair Rapozo: She has a question, not a problem.

Mr. Rosa: No, it is going to be a problem. I know. It is bothering her. She makes a problem.

Councilmember Yukimura: Joe, do you know that the Humane Society does tell the dog owner about all the things that you mentioned? They send a letter to the dog owner talking about checking the food and the water. Like Mr. Girald mentioned, hosing down a dog is one way to train a dog not to bark. Did you know that?

Mr. Rosa: What is that?

Councilmember Yukimura: Did you know that they are already doing that?

Mr. Rosa: I have not heard it being mentioned here. I do not have the packet, so I do not know.

Councilmember Yukimura: Yes, it is included in the packet that they send to the dog owner, which is probably why in some cases the dog stops barking and the complainant does not move forward.

Mr. Rosa: There is your proof. Education.

Councilmember Yukimura: Right. That is how the law is working. Thank you.

Mr. Rosa: So you cannot say it is the Humane Society that is doing that. It is education in both parties.

Council Chair Rapozo: Joe, I think you answered the question.

Mr. Rosa: Okay.

Council Chair Rapozo: They do provide it and that will continue. The packet will continue with the possible solutions for the dog.

Mr. Rosa: Yes, that is the way it is supposed to be.

Council Chair Rapozo: They have been doing that.

Mr. Rosa: We have not heard it in the public.

Council Chair Rapozo: Now you have.

Mr. Rosa: Yes. That is the way it is supposed to be because there are people who watch Hō'ike.

Council Chair Rapozo: Millions of them. I need to ask you to leave, Joe, because we have one more speaker.

Mr. Rosa: One more thing, there are similar parties. These people tell me that they get up with a barking dog and most of the time they look and it is a cat.

Council Chair Rapozo: Yes.

Mr. Rosa: So they say, "What am I going to do?" Shoot the cat or chase the cat.

Council Chair Rapozo: Next speaker.

Mr. Rosa: Thank you.

Council Chair Rapozo: Anyone else wishing to testify for a first time?

FORREST CALLAHAN: For the record, Forrest Callahan. I have to run, so I will make this quick. Everybody had some real good testimonies. From the first time I was here, like I said, I gave that interview to The Garden Island. It all comes down to basically a mindset, attitude, common courtesy, communication, and all of that stuff. One of the people who testified said they were for the law, but yet they said a lot of stuff being handled before it gets to the court and all of that. That just makes a point right there that there are other ways in handling them. Not everything is about going to court. I forget the names of the people who gave testimonies before me...I think her name was Marj, but like she said, you should get to know your neighbors and you would be surprised how much you can solve by talking first. Like I said, this law kind of just promotes neighbor against neighbor and that is not how it is. Nowadays with the Humane Society with programs for neutering and spaying, one would actually think that there are less dogs than thirty (30) years ago, but yet it is more of a problem now. It kind of does not make any sense to me. What changed over the course of the years is that more and more...if it is not dogs, then I would guess there are more people, right? Like I said last time, if you do not like the way it sounds, stop listening; if you do not like the way it tastes, do not eat it. There is a difference between "hearing" and "listening." Out in the community, we all hear dogs barking, but when you start really listening to it, of course it is going to be a problem. I hear it, but we are busy doing other stuff, too. If you cannot sleep then take some sleep aids. I do not know. Maybe you are not working enough or not tired enough. I just fall asleep because I am constantly on the go. I have no problem. The dog can be barking or somebody can be mowing the lawn, whatever. There are other ways. Not everything is a law in court. I am in favor on the repeal. I will put one more on the board since there are people keeping track and taking good notes. I just think we should try and work it out in the community. There are a lot of flaws in the law. I am not going to tell you how to make a law because it is kind of out of my league here, but from sitting here and observing, I say to repeal it and start over. That is it. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: Hi. Thank you. So in a lot of testimony that we got, people said that they tried to talk to their neighbor, but the neighbors would not talk to them, or they asked to mediate and neighbors have not mediated, and they put earplugs and they do not stop. How do you think a problem like that can be solved?

Mr. Callahan: Everybody has their own interpretation of "trying" and "excessive." You knock on the door and they were not home or he was busy or had to go—we will never know. It is just "he said, she said." What is refusing to talk to them or that they cannot get a hold of them?

Councilmember Yukimura: Well, I think in some cases they have actually approached the neighbor and see them face-to-face. Do you not think that those things actually happen?

Mr. Callahan: It does, but it depends on the approach. If you come and try to talk to me and you are the complainant, of course you are going to get the response...

Councilmember Yukimura: True.

Mr. Callahan: Do you know what I mean? It depends on how you approach the matter. It is just negative already. Like Marj said, it depends how you approach them. "Hey, come over for a drink. Can we talk about it? This is what is going on. I would appreciate it if..." If you are saying, "I have been here for twenty (20) something years and your dog has been barking for twenty (20) something years. Finally, I had enough already."

Councilmember Yukimura: I agree.

Mr. Callahan: There is just no way of knowing. You are not there. The Humane Society is not there all the time. Dogs are barking 24/7, but when the cops come then they are not.

Councilmember Yukimura: So you do not think we need a law?

Mr. Callahan: I just think that we need laws against stuff that really matter like crime, drugs, and other stuff. Barking dogs—come on.

Councilmember Yukimura: I see. You do not think that barking dogs really matter.

Mr. Callahan: Dogs have been barking for how many years. Stop listening or talk to the people. Talk first. I will reiterate what Marj said about having communication.

Councilmember Yukimura: Okay. Thank you.

Mr. Callahan: Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to testify for the first time? Please come up.

CALEN RITA: Calen Rita. This is my first time up here. I am for the repeal of this law because I feel it is a good point, but the way that the investigation and stuff is going around is bogus. I had firsthand experience with the Humane Society and how they investigate, and they do not investigate anything. They just take word of mouth from the person, the complaint, and they go and make their move and that is it. That is all you can do. After that, they get access to come to your house twenty-four (24) hours a day and tell you how you can and cannot raise your dogs. All of this was over the neighbor complaining—this is not to do with barking, but it is to do with their investigation. They said that one of our dogs ate her cat. So we said, “How do you know?” She said she saw the dog eat her cat and signed this paper, “This is what you have to do for this dog.” A couple of weeks later, she got her cat back because it had a chip and they found it at the Humane Society. That was some awesome investigation that they did. I just think that is kind of a gray area right there to give them that much power to just make up something that they feel they talk to one person and they look and think, “This is a young crew. They have Pitbulls and hunting dogs, so it must be true.” Come to find out, it is not really true. If my neighbor’s cat can roam in my yard and my dog wants to bark at it for one (1) hour straight, I watch them and I let them bark. I call the rest of the dogs and let them bark. That is their fault. The cat is trespassing. It is the same to me as if a human was to come in my yard and trespass. I had things stolen from me before and it is not going to happen again. That is all I have to say. Thank you.

Council Chair Rapozo: Thank you. Hold on, you have a question.

Councilmember Yukimura: Thank you for speaking. I agree with everything you have said. What happened when the Humane Society investigated this so-called “cat eating?” Did they cite you or anything?

Mr. Rita: It was not my dog, but they cited my brother because “she said she saw it.”

Councilmember Yukimura: How long ago was this?

Mr. Rita: This was about at least one (1) year ago.

Councilmember Yukimura: Okay. Did your brother get prosecuted or was it dropped because they found out that...

Mr. Rita: No, the dog still has to be twenty-four (24) hours a day with a lock on the cage, unless somebody is home to let him run around. The dog is pretty much in trouble for something that he never did.

Councilmember Yukimura: Were you able to get it lifted because the cat came back?

Mr. Rita: I think they just dropped it. It is a hassle and unnecessary stuff that did not need to happen.

Councilmember Yukimura: Okay. Thank you very much.

Mr. Rita: You are welcome.



Council Chair Rapozo:  
the first time?

Is there anybody else wishing to testify for

Ms. Oda: Thank you. For the record, Annette Oda. I understand and empathize completely with this gentleman. About three (3) years ago, I had to take care of my son's dog and we took really good care of it. We even put several locks on his leash so that he could run around in the backyard. It was a huge yard, so he could run around in the backyard with no problem. There was a person who decided that they wanted to cause trouble, so they managed to cut the leash and let her run around in the neighborhood. Of course she has a little chip, so the first time they called me and said, "You have to pick her up because she is here and she frightened this pregnant lady because she was jumping on her." She is just a loveable puppy, just a normal dog. So that woman, I guess, who that claimed that she was scared of the dog somehow held onto it long enough for the Humane Society to pick it up. The second time it happened again. Somehow, they got her out of the fenced yard, so she was roaming down the street. She is a friendly dog. There is nothing to be fearful about. She is a really sleek...I think they call it a Whippet. She had short hair and everything. She was really lovable like crazy, a nuts dog. But the thing is that she got out again. Michael and I went over to the store and said, "Give us the strongest leash you can, but it has to be long because we want her to be able to roam around freely," like how most animals should be. Again, they figured out how to let her loose. I guess the third time is the charm because the third time they wanted to fine me and I said, "Well, the heck with this. This is crazy." I kept on telling them that somebody is messing with our dog and it is not us doing that. There is no way that the dog could let herself loose like that. But they would not listen. They just said, "Sorry, the third time you are getting fined." I said, "I checked with my son and you go and keep the dog. You go find a better home for the dog because we cannot do it. This is crazy."

Council Chair Rapozo:  
(3) minutes are up.

I am going to have to cut you off. Your three

Ms. Oda:

Can I have three (3) more?

Council Chair Rapozo:  
to speak.

You can come back after everybody else gets

Ms. Oda:

Okay. Thank you.

Council Chair Rapozo:  
time? Second time? Ms. Parker.

Anyone else wishing to speak for the first

Ms. Parker: Alice Parker for the record. The problem with barking dogs is I think I mentioned before that my daughter and her mate were living in Kilauea and there were eight (8) hunting dogs next door that belonged to the son of the woman who owned the property. Well, the son did not live there, but the mother lives there and she was terrified of the dogs. They were not fed or watered properly and they were barking all of the time. We had a family emergency. I was in California and my daughter was in Kilauea and we could not discuss it because the dogs barked so much. My daughter could not use her cell phone because at that time there was insufficient cell phone reception in that area. I know that, too, because when I worked for the Agency on Elderly Affairs, there were areas where I could not make a cell phone call. If I found a senior in bad shape, I had to get to an area where I could get a signal. Anyway, we need a

barking dog law and I do not like to see a void either. This may not be working to the best possible result, but it is working somewhat. At least it is alerting people. I know you Councilmembers can refine it to the way you want it. Thank you.

Council Chair Rapozo:

Thank you, Alice. Mr. Hart.

Mr. Hart: For the record, my name is Bruce Hart. I am glad I stayed. I am a lot more hopeful. First I will state that I want some type of noise ordinance that would, among other things, address barking dogs. We need one. I speak from personal experience and experience with other people within the community. It is my understanding that we are really not here about that, that we are here about whether to repeal the law or amend the law. It is also my understanding that if the law is repealed, and I want everybody here and everybody out there that is watching to know, that there will be another law that will address this issue...I see JoAnn shaking her head...that will address this issue in a timely manner. Timely manner to me is three (3) months or less. I want the Council to understand that I am saying there needs to be a law. I am not going to speak about the repeal, but now I am beginning to wonder, and JoAnn is shaking her head, is there going to be any law at all if this law is repealed?

Council Chair Rapozo:

Yes.

Mr. Hart: Okay, so there we hear it from Council Chair, so I leave it up to the Council. You guys can do this. If it is repealed, then you are going to write another law. If it is not repealed, you are going to improve the law. We are not going to be without law for a very long period of time either way. Thank you.

Council Chair Rapozo:

Hang on, Bruce. Councilmember Yukimura.

Councilmember Yukimura: I think there are different answers. The Chair may say, "Yes, there will be a law." As someone who has worked on this law for two (2) years, and worked on many other laws, there is a likelihood that it will take one (1) or two (2) years because it will open up a possibility of all kinds of amendments. Also, the change that the Chair wants where a police officer/Humane Society records or witnesses does not have to...it will not take a change in the law. All it takes is a change in the Humane Society process and the money for them to do that.

Council Chair Rapozo:  
JoAnn?

Is there a question in there somewhere,

Councilmember Yukimura: No, I am answering him just as you answered. I am giving a different answer.

Council Chair Rapozo:  
Hooser.

Any questions for Mr. Hart? Councilmember

Councilmember Hooser: Since you gave him an answer, and I do not agree with your answer either, I would like to address that to the speaker. It is important that when something is stated by a Councilmember out in the public and it may be true in some perspective and not true in others, so I would like the opportunity to do that. The question that is before us is to repeal or amend is not correct. The question before us is to repeal or not repeal. That is the question that

is on the table today. Repeal or not repeal? That is it. The question to amend or question to write a new law is a question that may or may not be addressed in the future. I addressed this fifteen (15) years ago and it was the worst experience of my life for weeks. You see the kind of intensity and emotion that we have here today. It was no less so fifteen (15) years ago. So we have more dogs or fewer dogs, but fifteen (15) years ago there was a barking dog problem and today there is a barking dog problem. To introduce a new bill, whether to amend or not, and I will make this a question, will require someone to introduce it who believes that they want to go through this process and can get four (4) votes to pass it. If we have four (4) votes today to repeal it and those initiating the repeal have not offered any concrete amendments other than ideas, do you think that there is a political will for anyone to introduce these amendments and go through this whole process again, which is likely to take one (1) year or more?

Mr. Hart: Okay, I can answer that. I am not going to depend upon political will or my assessment of political will. Why do all of you not decide? Why do we not have some consensus?

Council Chair Rapozo: Councilmember Yukimura and Councilmember Hooser are correct that I did say yes and that is just from me. I am not going to use this opportunity to have discussion, but because it is brought up, my plan is to have a comprehension noise ordinance instead of this barking dog one and I plan to have it introduced at the next Council Meeting or at least start the discussion at the next Council Meeting. For this to have taken two (2) years, I thought it was way too long, but it went through the process. My plan is a comprehensive noise ordinance. Hopefully we can get that introduced and get that done. I believe ninety (90) days is sufficient and that is what I will strive for.

Mr. Hart: I will make it clear. Because I do not know whether there is going to be...I have absolute assurance...I believe Council Chair for his part, but because I do not know, I cannot make a decision whether I am for repealing or not.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: Bruce, did you know that if we do not have this law in place, two (2) neighbors can still sue each other for a barking dog nuisance in a civil suit?

Mr. Hart: I am not sure of your point.

Councilmember Kaneshiro: I am just saying that did you know that if we do not have this law that two (2) neighbors are still able to sue each other over a barking dog?

Mr. Hart: Yes, I understand that they can do that, but is that a substitute? Are you asking me that question like that would be a substitute for the law?

Councilmember Kaneshiro: I am just saying that if this law is not in place, there is still a way for two (2) neighbors to sue each other.

Mr. Hart: I am not in agreement with that. That always existed. I believe there should be some form of an ordinance.

Council Chair Rapozo: Question?

Councilmember Yukimura: So did you know that you can keep a law in place by receiving this Bill to repeal, so to stop the repeal, and have someone work on an amendment and introduce it when it is ready, but still have the law in place until then?

Mr. Hart: I understand that is possible and I understand enough of how that mechanism works, but I believe that that choice, as I said in the beginning, is up to the Council.

Councilmember Yukimura: Yes, that is what we are trying to decide today.

Mr. Hart: Right.

Councilmember Yukimura: And you are to give us input in what you feel.

Mr. Hart: Not so much what I feel, JoAnn.

Councilmember Yukimura: Well, you do not have to give us input if you do not want to.

Mr. Hart: What I would like to know, but I have determined that it is not possible to know, because maybe not every Councilmember has made up their mind, is whether if it is repealed, there is going to be another bill introduced that takes its place, and it is going to be completed and working within a timely manner. But you have said that you do not believe and Councilmember Hooser said that that is necessarily what is going to happen. Others have said that they are going to introduce a bill and I am back at square one where I cannot make a decision as to whether to repeal or not repeal.

Councilmember Yukimura: I introduced a Shoreline Setback Bill and a Vacation Rental Bill that I anticipated would be passed within three (3) months and neither of those bills were.

Mr. Hart: Right.

Councilmember Yukimura: There is no guarantee.

Mr. Hart: Okay.

Council Chair Rapozo: There is no guarantee.

Mr. Hart: Alright.

Council Chair Rapozo: But I think that if at least four (4) of us commit to getting it done in ninety (90) days, it can get done in ninety (90) days.

Mr. Hart: Council Chair, I hope that you all come to a unanimous agreement and that there is a barking dog ordinance not just by itself, but a comprehensive noise ordinance that comes into play that addresses all issues

of nuisance noise and that all of you agree on it; that it is a unanimous vote whenever it is finished.

Council Chair Rapozo: I hope you are right because that is what I am asking for. Any other questions for Mr. Hart? Thank you.

Mr. Hart: Thank you.

Council Chair Rapozo: Anyone else wishing to speak for a second time? Mr. Cremer.

Mr. Cremer: For the record, Robert Cremer, Jr. I think there should be a void with the repeal because when you talk about money and going to court, yes, we had plenty of people that testified on behalf of not repealing the Bill, but where did the ones on the side that had to go to court, who had to deal with their neighbor or had to deal with staying home? I know one had to stay home from golf though. I took comp time off today so that I could be here. There is a lot of people that cannot come here that needs to work, that are not here on a retirement plan or has some kind of market money to be here and testify every day. How often do you see the people that testify on behalf of the repeal here? Very seldom people like this come here and testify because they cannot afford to come here and testify. We are a minority, whether you know it or not. We need to repeal this law and have a comprehensive noise ordinance law and have the police equipped with the equipment to be able to say that the decibels of the people yelling and talking or the party or the dog barking is excessive to what it should be. When I went to Hawai'i island the first couple of times, I could not stand Coqui frogs. Honestly. You are worried about a dog, but wait until when the Coqui frogs get established here. It will soon; it is here already. You think that is going to be bad? I am going to tell you something that in life, when you tend to not hear and say it is something that I have to deal with in life...my aunty next door, my landlord, brought in a Rhode Island Red Rooster...Aunty Sweetie is going be listening and laughing right now...every rooster in the neighborhood did not bother anybody, but her nephew caught a Rhode Island Red Rooster in his friend's yard and gave it to her—that rooster “killed” everybody for the first two (2) weeks, including myself, and I lived next to roosters all my life. I told myself, “Robert, what are you thinking? You are letting this stupid rooster stop you from living? Let it go. It will go away.” If you look and things and say, “It is bothering me,” then it will bother you. That is all I have to say.

Council Chair Rapozo: Thank you, Robert. Anyone else wishing to testify after Matt for the second time? We have to take a caption break in a couple of minutes, so we will take the final two (2), and then take our caption break.

Mr. Bernabe: Matt Bernabe for the record. I will start off by saying that I want to repeal this law on the grounds that basically all of the guys complaining is in a form of terroristic threatening. We heard it today, “just the threat,” but yet the guy who sat in here that mentioned he is the complainant did not even understand how his guests at 10:00 p.m. or early in the morning going to their tours was the instigation of the dog barking. See, education should go to both parties as far as I see because the guys complaining do not understand what they are even complaining about. That is why I testified the last time that this is a bad law because it pits neighbor on neighbor, and then gives the first third party between neighbors, which is the Humane Society, who I feel is biased. I have dogs and I listed a few things that I have caught my dogs doing to my own surprise. I

mentioned the frogs and how they love to eat dog food. They lick it. Elderly people walk 1:00 a.m., 2:00 a.m., 3:00 a.m., and 4:00 a.m. where I live. I can tell you that. The kids like to sit there and play with their skateboards and my dogs bark at that. The other day, there was a guy with a broken leg walking his dog and it took him forever to get to from one point around the corner to the other point. I ran out there and asked, "What is going on?" Then I realized that he had a boot. That is not all—I have caught my dog literally staring at a plastic bag in the wind, fighting a plastic bag. I mentioned earlier that I train my dogs, but I also train them to be quiet when the delivery people come over. I go outside, give them the command, and they sit there. I have gotten compliments like, "Wow, your Pitbulls just stare at me." I said, "Yes, I do not like dogs that bark unless I am not around." If I am standing there and I give them the command, they better stop, but if I am not there I can tell you my address today and I can guarantee that nobody is grabbing my (inaudible) without coming out of there with some blood at least. They are trained. I am sorry to say that we have thieves. Maybe if the police officers were going to be at my door, sitting there and watching my stuff, I would not have a dog that barks. The thing that is astonishing to me is that more than one testified "just a threat." That language is terroristic threatening. It does not matter if Councilmember Kagawa points out that every time it gets to court it does not succeed. It does not matter that we have already acknowledged that these numbers are skewed and speculating at least that this is a success. I do not agree with that. I think it is a fail. I do not know why the Humane Society is mandated to be in this whole triangle, but the sooner we get them out of it, not at the table and only as the last resort of education or maybe the first resort of education after contact with the police agency, rangers, or cops.

Council Chair Rapozo: Thank you, Matt.

Councilmember Yukimura: I have a question.

Council Chair Rapozo: Matt, you have a question.

Councilmember Yukimura: Matt, do you think that having a law against drunk driving or against speeding is terroristic threatening?

Mr. Bernabe: Listen, we have already acknowledged that if I am drinking behind a wheel and my neighbor calls KPD and says, "I saw my neighbor take off with a beer in his hand," and unless they catch me with that beer in my hand, they will not send me to court. I am pretty sure that is the analogy that we are all going with today. If you want to "doctor it up" a little bit, I will hear it.

Councilmember Yukimura: No. My question is that are you saying by having a law it is terrorist threatening?

Mr. Bernabe: No, having a law is when they say, "Just the fact that I can call the Humane Society and start the process," that is what they are testifying on record. I bet you if you read the transcripts, go through it, and you read what he said, more than one testifier said "just having the law." They did not care that even when they pointed out that the reason the dogs were barking were provoked by them. They do not understand dogs. They, themselves, do not understand. When you have a testifier saying, "My bed and breakfast guests come home at 10:00 p.m. and leave in the morning and the dogs are ferocious," they do

not even realize that they are not even eligible. That is my point. That is a bad law that needs to be repealed. He needs to have an officer go there.

Councilmember Yukimura: Matt, I agree with you that bed and breakfasts have an impact on a neighborhood...

Mr. Bernabe: No, a frog has an impact on the dog.

Councilmember Yukimura: No, on the other hand, that in and out is just ten (10) minutes at the most.

Mr. Bernabe: You might be true on that, but the point is that the guy's position or argument is based that those dogs are excess barking and he is not smart enough to understand that he himself is the trigger, and therefore has the ability to start, and mind you that they also testified that if they had to sue on sue, they would not incur the cost. But because the Prosecutor picks up the cost...the lady that was not here for that court on the 22<sup>nd</sup>, she is so conditioned that the process will take care of itself that she probably thought she did not have to show up, and I will put money on that. Any more questions?

Councilmember Yukimura: I agree with you on that and I think it was the Prosecutor's job to make sure she showed up.

Mr. Bernabe: And hers because she is the complainant.

Council Chair Rapozo: Okay. Thank you. Is there anyone else who wants to testify? Annette, you are the last one before our caption break.

Ms. Oda: Annette Oda for the record. I am looking at this whole thing and I was here when the original Bill turned into law and I am furious because it is the same old thing going on and on. If everybody involved in voting had done their homework...and I mean homework...I am a retired elementary school teacher. I really mean do your homework. I do not mean to get word from here because somebody said this or that. Get the facts. If you get the facts, you have it before you, and then you say, "Hey, wait. This is not a problem." That is where it stops. No more. If you say, "Wait, barking dogs? Licensing cats? Wait a minute. Is that the priority of the County Council? Animals?" Do people not count? Do people in our community count? I thought that we are the ones that have more value to you than a dog or a cat. I am not knocking cats or dogs or anything, but they are not on the same level of humans. Do you guys not get it? If you have so much money, spend it on the homeless. Help them. It is not their fault for a lot of them. It is the government's fault for going beyond their budget and teaching everybody else to go beyond their budget, to go on credit. It is nonsense. Do not put the blame on everybody else. Do not change your priorities just because you have extra money. Set your priorities right, as Councilmember Kualii mentioned in the earlier session. This is sickening. You guys do not understand that you are in power to make decisions with our money and our lives. I never voted for you because of dogs or cats; I voted for you because I believe that you have a set of moral standards and business *akamai* or sense to know that you are going to live within the budget, cut where you need to, and audit where you need to so that there is no more nonsense. I insist, as a citizen of Kaua'i, that every single one of you do your homework. Do not just talk. Do your homework and check this whole thing out because this is nonsense. How do you determine whether there is a problem with barking dogs?

Council Chair Rapozo:  
time is up.

Annette, I have to stop you because your

Ms. Oda:

Okay.

Council Chair Rapozo:  
Yukimura.

You have a question from Councilmember

Councilmember Yukimura:  
there is a problem with barking dogs.

Annette, it sounds like you do not think

Ms. Oda:  
would like to see how you determine that.

What makes you think that there is one? I

Councilmember Yukimura:

Thank you. Do you not think that...

Ms. Oda:  
question. How do you determine it?

How do you determine that? Answer my  
Where are the facts?

Councilmember Yukimura:  
problem.

I have tremendous testimony that there is a

Ms. Oda:

No, I want the facts.

Councilmember Yukimura:

That is factual.

Ms. Oda:  
ready tomorrow morning?

Can you send me the facts? Can you have it

Councilmember Yukimura:

I will have the testimony that shows you.

Ms. Oda:  
that you said that cats are healthier indoors than outdoors.

Really? It is the same thing with the study

Councilmember Yukimura:

Let us stay on the subject.

Council Chair Rapozo:

Yes, let us stay on the subject.

Ms. Oda:  
dogs are a real problem on Kaua'i.  
what you say or think. I want facts.

Okay, but I want to see facts that barking  
I would like to see...not from you...not from

Councilmember Yukimura:  
gathered in this issue.

No, it will be the evidence that has been

Council Chair Rapozo:  
testimony that we received.

I think she is going to provide you the

Ms. Oda:  
the Clerk's Office?

Okay. Tomorrow morning? What time? At

Councilmember Yukimura:

End of day tomorrow at 4:30 p.m.



Ms. Oda: Okay. Thank you.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Thank you, Annette. With that, we will take a caption break for ten (10) minutes and be back at 3:50 p.m.

There being no objections, the meeting recessed at 3:40 p.m.

The meeting reconvened at 3:48 p.m., and proceeded as follows:

Council Chair Rapozo: Anyone else wishing to testify? If not, we will call the meeting back to order. Councilmember Yukimura.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: I want to say that the change that you, Council Chair Rapozo, have spoken for, which is that we have somebody who actually witnesses the barking; a police officer, a Humane Society officer, can be done without any changes in the law. No changes to the wording of the law require. All that is required is a change in the Humane Society's process, which is that the send an officer out and the only obstacle to that is the money, which you said you would be willing to commit. Therefore, what is really needed is an appropriation bill to give the Humane Society the money that it will take to go out for seventeen citations a year or so, and witness it before a citation is made. You really do not need an amendment to the Bill, what you would need is an amendment to the process and the money to deliver the process.

Councilmember Kagawa: I have received a lot of hate mail over this. In the future, I would recommend that when you write E-mails to a Councilmember; just speak on whether you are for or against it. Nothing is personal. I grew up with a dad that was a very light sleeper and because of that fact; we did not have dogs growing up in Hanapēpē Heights. He would turn on the air conditioner (AC) even when it was cold, because he would rather hear that humming sound than the dogs barking outside. We had some neighbors that had some dogs that would bark all night, but not continuously, but they would bark a lot. I think he knew at the time as a Deputy County Engineer, he knew that the County could only do so much. You cannot ask the Police to regulate everything, so I do not think he ever pushed for a dog-barking bill. February 26, 2014 was the date that the Council approved on second and final reading, I voted against the Bill, but I was close to supporting it because I heavily relied on the fact that we were modeling Maui's and we were praising the success that Maui County had in 2013. We did not talk about 2014, I guess maybe we did not have the stats yet, but out of sixty-eight (68) cases Maui County in 2013, only two (2) were cited with citations. A lot of them were a success with that three (3) step of complaint and investigation process, but it appears that for us in our trial year we issued fifteen (15) more than Maui did in their first successful year, and now we are hearing that Maui is just totally struggling with their ordinance. They do not even know what to do with it anymore. In 2014 and 2015, it has gotten bad for Maui County, which we have modeled our Dog Barking Ordinance after. Big Island, again, we have talked to the Councilmembers there, they struggle with it, the Police hate it and going out to calls. They have twenty (20) calls a month coming into the Big Island. Honolulu cut their contract with the Humane Society there; they do not even do anything about dogs anymore. They said

that they are too busy with crime in City & County to bother with a dog-barking ordinance. Some folks have said, "Mililani works," but I think those are areas that have a community associations, covenants, or what have you, and in those areas, it can work. We have Puako and Pikake; you can only have one (1) dog. There are strict rules that apply to residents that the board oversees. It is not an easy task at all. I am open to creating something that has at least at the minimum some type of verification by KPD, and I believe putting in that type of language and getting the commitment from the Police is going to have a substantive change to this Bill. By "substantive," meaning a big enough change that we need to go through the public hearing process, we need to have the questions and answers by KPD to say that they can enforce such a law, and we have not gotten that previously. A new bill would be required for any amendment, and I am not saying that even at that point, I would support it; I have never supported a dog-barking bill. I feel like many of the speakers here. Like the Tamura's case, you got the probably the farthest neighbor of all on the whole corner of their property complaining, and everybody else does not have a problem with it, and they have to suffer. Everybody has a different tolerance, I guess, and maybe the person has a low tolerance. I will spend my other five (5) minutes when everybody is done.

Council Chair Rapozo:

Thank you.

Councilmember Hooser moved to amend Bill No. 2590, Draft 1, as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Yukimura.

Councilmember Hooser: While the amendment is being circulated, I confessed that I misspoke earlier; I said that there was only one (1) question to repeal or not repeal. There is one (1) amendment that could be made in which is an amendment that I am addressing now and that amendment amends the effective date of the repeal. It does not change the title, the title is still an accurate title, but we can amend the effective date. As many people have spoken from the community, most recognize the need of an ordinance, because this is a real issue. Others have said that we need a comprehensive noise ordinance, and I agree we need a comprehensive noise ordinance. When we had this discussion of the differences of opinion, the Chair, and I did not know this, because we are not supposed to talk about this outside of the meetings, but the Chair offered that he was introducing a comprehensive noise ordinance in the next meeting, and within ninety (90) days, we could have such an ordinance. To deal with the issue of the gap, so we do not go without any ordinance at all, the proposal is to extend the effective date of the repeal until such time the comprehensive noise ordinance is passed, that also affects barking dogs, which could be as soon as ninety (90) days as the Chair spoke, or I suspect that things will take a little longer. This amendment says the repeal will take effect four (4) years from now. That is four (4) years to do a new bill, but I fully expect that to happen in ninety (90) days or a hundred and twenty (120) days as the Chair has suggested with the comprehensive noise ordinance. This allows us to deal with this issue in a responsible manner, look at it as the Chair mentioned, there are at least four (4) people here that want to pass such a comprehensive noise ordinance. Therefore, let us look at it as a comprehensive fashion, pass a measure that includes dogs as well as other noises, but until that point just in case there are glitches along the way, this existing ordinance remains in effect, and so we do not have that gap. The dog owners will still have protections and the people complaining about the dog noise still have the protections that are in place. That is a brief summary of the amendment that is being proposed.

Council Chair Rapozo: Thank you. I did not say that we have four (4) people on a body that will support a comprehensive noise ordinance. I said that we need four (4) people. I have no clue where everybody sits on a comprehensive noise ordinance. Any discussion on the amendment?

Councilmember Kaneshiro: With the amendment, I think my philosophy is still the same. My philosophy is that the County does not need a law for dog barking. We hear this gap between if we do not have this law than we have a gap, but there is not gap because the education can still go through. The Humane Society said they will still provide all of the information and in the end, if two (2) neighbors want to go and take each other to court, they can. That is all our law does. Our law gives people the avenue to go to court in a criminal case where our Prosecuting Attorney defends the complainant and the dog owners defend themselves. Without our law, all the same things can still happen, but in the end it will go to a civil suit. In a civil suit, the complainant pays for their attorney, and the barking dog owner pays for their attorney and they settle it in court. My philosophy will not change. I do not think we need a County Dog Barking Law and as far as a noise ordinance, I do not know if I would support it. I really would have to see what that is about. As far as having our County resources defending a complainant, I do not think that is fair. That is just my stance on it. I will probably by repeating the same thing again when we come back to the original repeal.

Councilmember Yukimura: I just want to say in response to Councilmember Kaneshiro that it will not be the same and what will be missing if you do not have this Barking Dog Law in place is the community standard that says that incessant barking is not acceptable to the community. It does not say "absolutely no barking," it says, "unprovoked excessive barking that disturbs neighbors is not okay." It is just like punching someone for no reason is not okay. We do not leave that to a civil lawsuit to be settled between them. We are saying that an assault is not an acceptable thing to the public that is why the arm of government or of the state is used by putting a law into effect. What this law does is it recognizes barking of dogs as a public nuisance, not a private nuisance. If it were just something between two (2) people that the community did not care about, then it would be two (2) people fighting in a civil suit. However, what is really, really important is setting a public standard that says what is acceptable and I think we have had testimony across the island that it is a problem to people. It affects their level of sleeping and so forth; I do not think it is extra sensitive people. We have provided a process that puts an emphasis on education, and it assumes that most dog owners are good neighbors, so it allows things to stop before going to court. But where there are people who do not care and who are still violating the community standard than there is a public process. Repealing this law is not going to...and leaving it to civil lawsuit is not going to address a community problem that affects the quality of life on this island. It is not saying that all dog owners who are being brought forth because of this law, are wrong. This process allows a lot of the complaints to drop out. It actually allows for a process that is almost self-enforcing. Eighty percent (80%) do not go to court, but are solved. If you do not have this law, which includes the motivation and the awareness that it is a community problem, you are going to leave a very big community problem that is not addressed.

Councilmember Kagawa: I appreciate the intent of the amendment, however we have exposed through the discussion at least some of us here on this Council and I think the public knows that this process and law that we have, is very flawed. It takes one side of the story and basically leads to thirteen (13) defendants that are still awaiting going to court, and either pleading guilty or fighting it in

court. If we do not repeal it today, we are going to end up unfairly treating these thirteen (13) defendants under this very flawed Bill. I think that is wrong. When we understand that a law is flawed and that there is a lot of improvement that needs to go into it, you repeal it. Thank you.

Councilmember Chock: In the intension to move in the direction of a noise ordinance, I will support this amendment, however, not at the expense of not amending the current Ordinance. One of the things I have learned is that there are some areas of concern and need attention in the current Ordinance, such as the verification process which I think we may or may not be able to amend, but more so, more needs to be done in addition to the log from my perspective. Whether it be KHS or the Police taking a little bit more action. There was discussion of recording the noise from your home or if it that big of a noise issue, then that should be done from the privacy of your home and still be able to make a point. The second part is that I do believe there needs to be an additional process that includes mediation prior going to court. We need to encourage that this does not go to court as much as possible. Lastly, I think it is fair that if a dog owner wins that the complainant should pay for their court fees. I just think it is unfair that you drag someone all the way to court, and the dog owners have to suffer for all of these things. Again, I support a noise ordinance. I think what I heard also is education for all and I agree with that. I think there needs to be an emphasis on education on tolerance on this island across the board, but I do agree that there is something that needs to be done. Not everyone has agreed to, but the majority of the people around this table has agreed that there needs to be something that is done. I am in supporting of amending the current amendment, and if we can continue to move in the direction of amending the current ordinance. Thank you.

Councilmember Kualii: I am not in support of amending it. I do not believe a bad law should remain for even a single more day to encourage anymore unfair citations. As Vice Chair Kagawa talked about the thirteen (13) that is sitting in place now. Let us also recognize what Councilmembers Kaneshiro and Yukimura have highlighted is that seventy-five percent (75%) of the complaints or went away without even getting to a citation. That first part of the process where the Humane Society does the notification, education, dog owners are connected to the customer service representatives, the behaviorists, and that outreach is resolving seventy-five percent (75%) of the initial complaints can and will continue for little to no costs. They have even said that it is not much cost to them, and it is part of their service any way because they care about the animals and they want to determine that the dogs are not barking because they are being mistreated. If they had any sense of that being the case, they are going to send people out to investigate. There is no real gap here because the majority of complaints will still be addressed and in fact these seventeen (17) citations of which four (4) or five (5) did not pan out for lack of evidence, that is seventeen (17) in fifteen (15) months. Even if it takes us three (3) months to redo this Barking Dog Bill and make it something that works, and correct the problems, because there are clear problems that everybody agrees to. Based on all of the discussions that we have gone through, and *mana'o* and input we have received from everyone involved, I think we have what we need to quickly improve this Bill. I am not as hopeful about a comprehensive noise nuisance law being done quickly, but I am pretty sure that...and that would be where I would put my energy and time because it is all here. We have heard from the Humane Society, KPD, the Prosecutor, and I think with a little more effort I think we could correct these things and put in the processes and language. In the meantime, this whole worry about having a threat of a citation, like what the Humane Society Director said, they would just change that language so that one last

sentence...because it is a whole letter and there is just one little sentence near the last couple paragraphs that talks about, "If you do not resolve this, a citation may be issued." It is not even saying that it will be issued. Well you could change that to, "This matter will be passed on to the Police Department," where we used to go anyway. Yes, they do not have the resources and they say that, but when the rubber hits the road and somebody has to do it short of this law, where it comes to the point of seriousness and citation where enforcement has to deal with it, that is what it would be for that little gap period. Like what Councilmember Kaneshiro said, they could still go to court; it is just that both sides have to pay for their own attorneys. I am pretty confident that the law is unfair, unenforceable, but it can be improved fairly, easily, and quickly – not a year or two (2) years, that is ridiculous and this is only the case because of what we are starting with. We are not starting with a blank page. The people who worked on this law did a lot of good work. Eighty percent (80%) of the language, probably more, can remain. It is just those areas that make it unfair and unenforceable. I think to have a bad law like this in place for even one (1) more day, where one (1) more dog owner could be cited unfairly and then have to jump through all the hoops, spend money, take time off of work, as the Chair talked about, is not right. We have a responsibility to make good law and to repeal bad law. Do not worry about the replacement, it will happen. Each of us can only speak for ourselves. I will put the effort and time in to it and hopefully three (3) of my colleagues will support that and then we will have a new law.

Council Chair Rapozo: Any other discussion on the amendment? If not. Roll call.

The motion to amend Bill No. 2590, Draft 1, as circulated, and as shown in the Floor Amendment which is attached hereto as Attachment 1 was then put, and failed by the following vote:

FOR AMENDMENT:	Chock, Hooser, Yukimura	TOTAL – 3,
AGAINST AMENDMENT:	Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Motion fails.

Council Chair Rapozo: We are back to the main motion. Further discussion?

Councilmember Yukimura: All this talk about amending the law and why it is a bad bill are centered on the fact that people will not be witnessing the actual barking. That is not specified in the law. There is no wording that can be changed there. The only thing that has to be changed is the Humane Society's process, which does not need a change in the law. It just needs the Humane Society being willing to send out its officers to sit and listen for ten (10) minutes to incessant barking. All this talk about amendments does not make any sense to me. All we have to do is give the Humane Society the money that the Chair has acknowledged would be necessary if we were to follow that procedure. Now, to give it to the Police Department does not work at all. It is a way to make the law totally unenforceable as we see on O'ahu where they require a policeman to go and listen and the police department does not have the time or priority to do that because there are other higher priorities. Another County has that same problem. If you really want to fix the law as has been explained by those who want repeal, we should not repeal the law. We need the standard. We need the declaration that this

is a public problem and then we just have to change the process by which we are being addressed. Even these thirteen (13) citations that are pending right now, the Prosecutor has prosecutorial discretion. He can give all the citations back to the Humane Society and ask the Humane Society to gather better evidence and then bring it forth. There are ways to cure this law without repealing it. That is the better and wiser way to deal with this situation. That is why I will be voting against the Bill to repeal because we have heard testimony across this island about how neighborhoods have gotten better since the Barking Dog Law has taken effect. If you ask, is the law working or not, you ask the complainants. It is the complainants who are saying...or people are bothered by it, who are saying that it is actually working. Those who oppose it, many of them have kind of an abstract fear about it, but they do not have specific cases in which this Barking Dog Law has been used against them. Even Ms. Tamura, I mean, I do not know if you have been cited under this law, so your case was prior to the law being in effect. If you look at all the basic evidence of how the law has worked, it has worked basically, and yes, there are things to change, but they can be changed without repealing the law. In fact, there has been no specific suggestion about how you are going to actually amend the law.

Councilmember Kagawa: I think we have to recall that Ms. Tamura showed up before we approved it back in February 2014, along with her husband. They spent a lot of time in here telling us not to pass this law because it put not only finance issues, but two (2) years of stress, and they have a family. To go through that stress with a frivolous complaint, yes, there were legitimate complaints, a lot of them. I know some of the testifiers and they do not make things up. I know the stories of the small dogs barking, it is true, I live next to one, but it is not a bad neighbor. It is just these little dogs that when you leave the home, they are so attached to the owners that they have to somehow call...we have to have a way to get the dog owners to call Penny and perhaps they can provide them with some guidance because the owners do not know. They are not home. The dog is lonely. The dogs are very attached to the humans. You can use the peanut butter toy, you can leave the television on, you can exercise them, there are some remedies, but I think it is the communication. It all boils down to what Marj and Forrest talked about. If you do not even tell the owner that the dog barks a lot when you are gone and it disturbs my life, how are they going to know? So, it is about communication. It is hard sometimes to communicate because we know that we are not the perfect neighbor too. This is a tough issue and I cannot see that we would want to leave a law that we have exposed to the public that is flawed. Knowing that all we need is a complaint form and you could possibly be cited, which seventeen (17) people already were cited. Like what Ms. Tamura said, it puts a lot of stress, and apparently under that process, it is unwarranted stress on people. This is the United States of America, and we need to think of both side, not only accusers. We have to create laws that are fair for both defendants, so that everybody have their equal time and say in what happened and what is going on. We cannot only have one side of the story. This is not a communist country. Wake up, seriously.

Council Chair Rapozo:

Anybody else?

Councilmember Kaneshiro: The questions I have asked myself as we looked at this: do we need a County dog barking law? I think we heard a lot of testimony and they say just the threat of having our County law is what is making dog owners take care of their dogs and make their dog behave, but in actuality without this Dog Barking Law, there is still the threat of lawsuit. Is it the law that made people do it or is it the education and awareness that...if your dog is barking, yes, you can get into trouble – I do not know. When you look at the graph, it proves

my point that it is not the law that is doing anything. I think it is the education and awareness because fifty-three (53) cases were resolved without even having to go to Court. Do we need a law that is unenforceable? Do we need a law that our County will use our resources to have our Prosecuting Attorney defend the complainant, or do we let them settle it and be fair? I also think about what is fair. I think if it is fair if there are two (2) neighbors, one with a barking dog and one that does not enjoy the barking dog that if he does not like the dog, he puts his money into his attorney, the dog owner needs to defend themselves, and they take it to court. We do not need this law for the education part and Penny answered it a couple weeks ago, that they still can provide all of the education, all of the information to the dog owners, which I think is the main reason of the success. If there is one (1) success from this Dog Barking Law, it is the awareness that some neighbors do have a problem with dogs in the neighborhood because they are loud. Maybe the dog owners do not even know that their dogs are barking because they are at work. This packet provides them awareness that their dogs are barking and do something about it. Again, for me, it is a redundant law. We do not need the law because you can go to civil court on it. Do we need the law for the education? No, we do not need the law for the education part, which is probably the most important part of this. The education provides not only education, but awareness to neighbors that their dog is a problem, and can they do something about it. Will there be people that may fight it? Probably, there might be some, but that is when the neighbors can take each other to civil court. We do not need our law. Again, the fairness of it. How fair is it that someone can make a complaint and get defended by our Prosecuting Attorney while the person with the dog need to pay for their attorney. I do not think it is that fair. For me, I guess you can say that it is a philosophical thing, but we do not need redundant laws and we do not need a County law that is going to use our resources to defend a complainant. If they want to go to court, they should use their resources and even the playing field. That is my reason for supporting the repeal.

Councilmember Kualii: I wanted to be clear that no it is not as simple as changing the Humane Society's procedures and that it is written in the law. There are problems in the writing and language of this law. Number one (1), the section that says barking dogs and what is continuously or incessantly for a period of ten (10) minutes and then intermittently for twenty (20) minutes and thirty (30) minutes, I think everyone talked about how maybe that is not the correct time periods and that it should be longer. Obviously, you need proof more than a log, but the language on affirmative defense. It ends with, "Or for any other reasonable or apparent cause, which tease or provoke the dog," so how are you defining, "teased or provoked the dog." The dog is barking or making any other noises for many different reasons. It could be for a chicken walking by. Most importantly is the absence of the due process for the dog owners. The complainant gets to do the log, the dog owner does not have anything until he has to show up in court and try and rebut what is said in the log, and maybe just come up with the reasons of why the dog was barking; the cat walked by and all those things. Also, the fairness of the cost of litigation, right, so for those people that are winning in court, they are defending themselves, the dog owners, they can win in court, but they cannot get their court fees back. Maybe there should be language that says, that would be what happens, whether they can get back their court fees a hundred percent (100%) or that is shared fifty, fifty (50/50), there should be something that is fairer to the dog owner as it is for the complainant at this point. Most clearly, I think the reason we have this problem with the law being vague and allowing the Humane Society to come up with all their procedures as they see fit, that is why we are where we are. The law did not spell out clearly what happens before the



issuance of a citation. Who has to do what? Who has the burden? So what does the complainant do? All the complainant has to do is call the Humane Society and submit that log. There is probably more than that they should have to do to gather evidence and then have somebody else verify from the Humane Society or KPD. What does the dog owner do? The dog owner does not even have a role to submit their side of the story whether it be in person to the Humane Society or in writing, but where is that a part of the process so that there is that due process. And then the Humane Society officer, is it enough just to make a phone call or just to try to contact them? Ultimately, there should be some kind of witness, collaboration, and some evidence where they go and...and whether we involve KPD or not, I think if we want ultimately the citation to hold up in court, then it has to be right. There has to have, whether it be a collaborating witness or the evidence and whether it is the Humane Society's enforcement officer or KPD, this has to be redone. There are three (3) or four (4) examples of actual language in here that can either be changed, or added. That needs to happen. I believe now that we had all of this, we have done all this work, it can be done pretty quickly in the next few months.

Councilmember Hooser: I am not talking to the Councilmembers because it is clear that the four (4) votes are there and I am not going to change anybody's mind, but I will speak to the community. I dealt with this issue fifteen (15) years ago, and people literally would call me up crying, older people, and said, "I work all night long, I come home, and there is this dog tied up outside my window at the neighbors next door in Līhu'e. Eight feet (8') from the house crying and barking all the time. I cannot sleep at night. Can you help me? I have called the police. Nobody can help me because there is no law against this. Can you please help me? I tried talking to my neighbor." This is not just one (1) time. These are multi-generational families; these are not people that just moved here. I have a dog and when he barks in the middle of the night, I will get up and go in the living room to find out what is going on. I might lay there for a while, but I get up and go find out what is going on. It is a real problem. It was mentioned earlier that we are looked upon as leaders in our community and it is up to us to deal with this problem, and not to look at the other way and act like it is not there, not to throw the baby out with the bath water, because we do not want to deal with it. This is a tough issue and we need to deal with it. Repealing this issue, this Bill does not deal with the issue. It just throws the baby out with the bath water. Many people have said how easy it is to fix, "We can just do this or that." Personally, I think it is working. Can we make it better; sure, we can make it better. It is up to those on the Council who feel like it needs to be fixed to offer those amendments and that is how the process should be working right now. If amendments would have been issued originally instead of a repeal, we would be at the final stages of a new and improved ordinance. Instead, we are at the stages of repealing the ordinance and taking away the only tool that these folks have. Most people, like myself and others, probably most people here, will go and try to work it out with their neighbor. If my dogs barked in the middle of the day, my neighbor will call my cell phone; I will run home and fix it. Same thing when my neighbor dogs go off. This is not the situation we are talking about. We are talking about neighbors that do not care. Neighbors that do not take care of their animals and people who live next door who have to deal with it. There are all kinds of ways to deal with this. You could ask for third party verification, you can make the dogs for longer periods, shorter periods, you can take out all kinds of things, but that is not what is being proposed. Unfortunately, I doubt if we are going to see anything. This will be repealed, and there will be an extended time before we see anything. That is my knowledge. I applaud the Chair for saying that he would have something by the next meeting, and we can pass it within ninety (90) days, and I offered an amendment basically



saying, "Let us do that and we will keep this Bill in place until that happens, and then we will have a new bill and it will be all better," but the Council chose not to support that amendment. Others have talked about how they can fix it, but no one is offering up anything specific. We talked about threats. It is called deterrence. Again, the same reason we have most of our laws. We do not crack down on every single person who breaks the law. We have a law that most people are going to comply. Spending laws, most people follow the laws, we give some tickets, but we do not see warning notices to people saying, "Please drive at forty miles per hour (40 MPH) along the stretch," we have laws. Is it stressful? Yes, it is stressful for everybody and that is why we have to deal with it. It is stressful for the people that have to live with it year after year after year, and now we are going to take that option away from them. Thank you.

Council Chair Rapozo: Anyone else? If not...and I appreciate the amendment offered, but like Councilmember Kuali'i said to allow this Bill to even go one (1) day further, I think, would be a disservice. Simply because you are going to allow people, humans to get citations for something that may not be true. I have a hard time with that. The problem is not the problem with the barking dogs, we acknowledge that is a problem, but to allow this process to continue for another three (3) months or whatever, puts our people, dog owners, at risk at being cited because somebody said their dogs barked. That is dangerous. No enforcement mechanism on any law that I know of, and I was only a cop for twelve (12) years, but that is twelve (12) years of responding to all kinds of things. You do not go to a person's house and arrest them or cite them because "somebody" said that they did something wrong. You have to validate that. You validate that by talking to neighbors. The person does not call you back, you go to them, and that is what an investigation is. Again, I am not sure if the Humane Society is the proper entity for that, I do not know if they have the resources, if we expect them to do it, we have to pay for it. I am not sure if it is KPD's function. It does not matter. You have to follow-up on that and you have to verify that in fact, there is substantiating information or witnesses or some kind of evidence, I mean a tape recording does not say nothing, except that the dog was barking. The way this law is written, the affirmative defense is something caused the dog to bark and as long as there is something that caused the dog to bark, they cannot be found guilty. It is actually a useless law, except for the threat, the deterrent – "If you do not listen, we are going to cite you." That is what this law is, but in reality, you go to court and the judge says, "The State has to prove that nothing caused that dog to bark," not the owner of the dog. Excuse me, Councilmember Yukimura, I have the floor. The State has to prove that the dog was barking for no reason. The burden of proof is on the State. The defendant can sit there and shut his mouth the whole time. The State has to prove that in fact the violation was committed. Now, the defendant can use the – "My dog barked because of the cat," he can use that as the defense, but at the end of the day the State has the burden of proof in any trial. That is a loophole in the law that basically says nobody will ever be convicted unless they plead guilty or no contest. That is what it does. Therefore, for the poor soul that plead no contest because he did not want to go through the hassle, he should have gone to court, but again, a whole day from work, possibly attorney's fees, and for what, because a neighbor wrote a log. We know how neighbors get. Believe me, I have been in that business long enough to know that people do not always tell the truth when they are having neighbor conflicts. That is just the way it is. I talked about a comprehensive noise ordinance because really, what about the person who is living next to a house with thirty (30) or forty (40) roosters that crow every morning at 2:00 to 3:00 in the morning? We do not address that. Not with this Bill. We went after the dog owners, but not the chicken owners. What about the parrot? I live

next to one of them in Hanamā‘ulu and let me tell you that is worse than a dog. That drives me nuts. Of course, we did not do nothing about it, I did not call the cops for that, but that is the problem as well. What about the person with a motorcycle fixing his engine? See, noise is the problem. A comprehensive noise ordinance addresses all of that. It does not matter if you have a dog, a rat, a cow, motorcycle, and a parrot – if you are causing noise to be bothering your neighbor, then it should be addressed in a comprehensive noise ordinance. That is what that does. I talked to the reporter from The Garden Island and he was surprised to hear that we do not have one. Whether or not we do a new bill, or a comprehensive noise ordinance, we understand something has to be done and something will be done. Again, it is going to be up to this Council to pass a new bill and nobody else, and that is what I am hoping for. With that, roll call.

Councilmember Yukimura: Chair? I did not speak twice.

Council Chair Rapozo: Yes, you did.

Councilmember Yukimura: Not on the overall discussion about the Bill.

Council Chair Rapozo: Yes, you did.

Councilmember Yukimura: No, I did not. I spoke on the amendment.

Councilmember Kualii: Were we going to have two (2) for the amendment and two (2) for the Bill?

Council Chair Rapozo: We are on the main motion.

Councilmember Yukimura: I have not spoken twice on the main motion.

Council Chair Rapozo: This is getting really old, Councilmember Yukimura, you spoke once before Councilmember Hooser introduced his amendment and you spoke once after the amendment failed. I do keep track.

Councilmember Hooser: I have a process question.

Council Chair Rapozo: Please.

Councilmember Hooser: So, we are allowed to speak on the amendment and on the main Bill – five (5) minutes on each one.

Council Chair Rapozo: I am sorry, could you please state that again.

Councilmember Hooser: We are allowed to speak on the amendment and on the main Bill.

Council Chair Rapozo: Correct.

Councilmember Hooser: Twice on each one.

Council Chair Rapozo: Correct.

Councilmember Hooser: Okay.

Council Chair Rapozo: She spoke once before you introduce your amendment on the main Bill, she spoke once after we came back to order for the main motion.

Councilmember Yukimura: Council Chair, I ask then for a...I have to say this because you are totally wrong. Would you please allow me to correct your statement?

Council Chair Rapozo: What am I wrong on, Councilmember Yukimura?

Councilmember Yukimura: The proof of provocation is an affirmative defense.

Council Chair Rapozo: Correct, I think I said that.

Councilmember Yukimura: Only thing that has to be proved by the...you said that the complainant or the Prosecutor has to prove that there was no evidence of a provocation and that is not correct.

Council Chair Rapozo: I said the State has the burden of proof...

Councilmember Yukimura: All that has to be proved is that there is a dog which no person should keep a dog which barks, cries, et cetera, intermittently for a period of twenty (20) minutes within a thirty (30) minute period of time or continuously or incessantly for a period of ten (10) minutes to the disturbance of any person at any time of the day or night regardless of whether the dog is physically situated in or upon private property." That is the proof that the Prosecutor has to prove. If the owner of the dog can show that it has been provoked, then they have the burden of proving that there was a provocation that is an affirmative defense.

Council Chair Rapozo: Got it.

Councilmember Yukimura: That was totally inaccurate.

Council Chair Rapozo: What I said was the State has the burden of proofing beyond a reasonable doubt that a violation occurred.

Councilmember Yukimura: And you also said that you had to prove that there was no provocation.

Council Chair Rapozo: Okay, whatever you say. Roll call.

Councilmember Yukimura: And that is how...

Council Chair Rapozo: Roll call. Done...roll call.

Councilmember Hooser: I have something...

Council Chair Rapozo: The Chair usually has the opportunity to speak last, and that is just a courtesy, you do have another opportunity Councilmember Hooser, you did not use your two (2).

Councilmember Hooser: exercise courtesy with each other.

Thank you, Chair. I agree that we should

Council Chair Rapozo:

Yes, and I am trying my best.

Councilmember Hooser: Even though that is not in the Council Rules that the Chair speaking last, I understand that is courtesy. I think we should allow each Councilmember to speak at other times as well.

Council Chair Rapozo:

And I do. I try to be fair.

Councilmember Hooser: For the record, you had mentioned that this law was so bad that you did not want to let it go another day and allow people to unfairly get cited, I would just like to point out that that works both ways. By repealing it, we take away the rights of people to complain and pursue the law that they now have. We are leaving people without options that they had yesterday. The Mayor still has to either veto or let this go into law, so that people who are concerned about this, seventy-eight (78) people testified opposing the repeal on the sheet that I had in front of me, and only four (4) supported the repeal. If those same people feel strongly about this issue, contact the Mayor and request the he veto this measure and then that would be the next step. I want people to know that they have that option. A hundred and twenty-eight (128), this must be an updated testimony, so I just wanted to point that out for the record so that people know that they do have an option reaching out to the Mayor and asking for a veto of this, until we have another law in place, which you and Councilmember Kuali'i apparently are both pleading to put on the table in the near future. Thank you.

Councilmember Kaneshiro: Sorry Council Chair, I want to use my second time to speak. I was not going to repeat it, but again, we are not leaving anybody in the cold. Us not having this Barking Dog Law does not mean that people still cannot take each other to court. I do not know how many times I need to say that, but I am just saying...we are not leaving anybody in the cold, and there is no gap. If people want to take each other to court, they can still do it. Only thing, they will not be using our County resources, they will not be getting a defense by our Prosecuting Attorney, and their staff. They will go find their own attorney and they will take the neighbor to court. There is still a way for them to continue to pursue if the dog barking is a nuisance, they can still continue to pursue it, should all of the education from the Humane Society and awareness does not work.

Council Chair Rapozo: Anyone else? As Councilmember Kaneshiro talked about the success of this program is in the Humane Society's intervention. That is where the success is. It is not in the citation. It is not in the threat of going to court. The success is when the Humane Society sends that packet to the barking dog owner, and they open up that packet, and they say, "Oh my gosh," number one, "I did not realize my dog was a problem." Number two, "There are all these ways that you can control your dogs barking," which works, that is the success of the program. Obviously, it is not in court, because we have lost it all. It is in the Humane Society's intervention, which is not going to stop with the repeal. That is going to continue. That is not going to stop. The packets are still going to be spent out, it will be modified, but nonetheless, the message will get out. I anticipate Councilmember Kuali'i submitting a bill that will come up, most of the work has been done, I think we heard from everyone. I agree with Councilmember Kuali'i, the bill has to include the technical, the mechanics of how it is going to be done, and not leaving it up to anybody to say, "Okay, the Humane Society, you need to change

your policy,” the Police Department, we have not even spoken to them, but the bill has to include all of those mechanics so that when we roll out the new bill it can work. It will also provide the barking dog owner at least the courtesy if you will of an investigation that may be the neighbor was not telling the truth. Maybe the dog is not a barking dog. That is absent today, so with that, roll call.

The motion for adoption of Bill No. 2590, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 4,
AGAINST ADOPTION:	Chock, Hooser, Yukimura	TOTAL – 3,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: 4:3.

Council Chair Rapozo: Thank you. Next item please.

Councilmember Kualii: Council Chair Rapozo, because I am employed by the YWCA as a recipient of funds from this VOCA grant I declared a possible conflict of interest with respect to this item and out of an abundance of caution, I will be recusing myself.

*(Councilmember Kualii was noted as recused from C 2015-210.)*

C 2015-210 Communication (07/15/2015) from the Prosecuting Attorney, requesting Council approval to apply for, receive, and expend Federal funds in the amount of \$520,390, and approval to indemnify the State of Hawai‘i, Department of the Attorney General, for the Kaua‘i Victim of Crime Act Expansion Project 15-VA-3 for the period of September 1, 2015 through July 31, 2018: Councilmember Kagawa moved to approve C 2015-210, seconded by Councilmember Chock.

Council Chair Rapozo: Any discussion?

There being no objections, the rules were suspended to take public testimony.

There being no one present to give testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2015-210 was then put, and carried by a vote of 6:0:0:1 *(Councilmember Kualii was noted as recused).*

*(Councilmember Kualii was noted as present.)*

C 2015-211 Communication (07/15/2015) from the Director of Finance, transmitting for Council information, the Period 12 Financial Reports – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of June 30, 2015, pursuant to Section 21 of Ordinance No. B-2014-781, relating to the Operating Budget of the County of Kaua‘i for the Fiscal Year 2014-2015: Councilmember Yukimura moved to receive C 2015-211 for the record, seconded by Councilmember Kualii.

Council Chair Rapozo: Discussion?

There being no objections, the rules were suspended to take public testimony.

There being no one present to give testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2015-211 for the record was then put, and unanimously carried.

### CLAIMS

C 2015-213 Communication (07/09/2015) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Benjie Bernabe, for personal injury and medical expenses, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kualii moved to refer C 2015-213 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Chock, and unanimously carried.

C 2015-214 Communication (07/09/2015) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Robert J. Cook and Veronica Y. Cook, for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kagawa moved to refer C 2015-214 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Chock, and unanimously carried.

C 2015-215 Communication (07/14/2015) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Crystal Rita, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kualii moved to refer C 2015-215 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Chock, and unanimously carried.

### COMMITTEE REPORTS:

#### PLANNING COMMITTEE:

A report (No. CR-PL 2015-15) submitted by the Planning Committee, recommending that the following be Received for the Record:

"PL 2015-02 Communication (06/01/2015) from the Director of Planning, requesting agenda time to brief the Committee on the status of the General Plan Update,"

Councilmember Hooser moved for approval of the report, seconded by Councilmember Kualii.

There being no objections, the rules were suspended to take public testimony.

There being no one present to give testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

A report (No. CR-PL 2015-16) submitted by the Planning Committee, recommending that the following be Received for the Record:

“PL 2015-03 Communication (06/24/2015) from Committee Chair Chock, requesting the presence of the Director of Planning, the Deputy Director of Planning, and the Director of Economic Development, to provide a briefing and an update on proposed agri-tourism legislation that the Administration is developing,”

Councilmember Hooser moved for approval of the report, seconded by Councilmember Kauli'i.

There being no objections, the rules were suspended to take public testimony.

There being no one present to give testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

#### COMMITTEE OF THE WHOLE:

A report (No. CR-COW 2015-09) submitted by the Committee of the Whole, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2590 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, BY REPEALING ARTICLE 25, RELATING TO BARKING DOGS,”

Councilmember Kauli'i moved for approval of the report, seconded by Councilmember Chock.

There being no objections, the rules were suspended to take public testimony.

There being no one present to give testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

#### RESOLUTIONS:

Resolution No. 2015-53 – RESOLUTION PROPOSING A CHARTER AMENDMENT RELATING TO THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND

Councilmember Hooser moved to schedule public hearing for September 2, 2015 and refer to the September 16, 2015 Council Meeting, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Councilmember Kagawa.

Councilmember Kagawa: I feel like we have been through this last month or two (2) months ago where we discussed it during...I think we discussed it twice, actually, it came up in a bill, we had a public hearing, overwhelming support

for the Council to increase the percentage by half percent. Our decision on the Council was based on the Administration proposing in their budget and we had concurrence by the majority of the Council that times are so tough that we did not want to commit the full one and a half percent to this account at this time, and just keep it back where the voters voted for it at the half percent. Now, we are discussing this, I believe for the third time. It came up again in a budget request amendment. I am just baffled as to how many times are we going to discuss the same issue and move on, because times are tough, we went through this whole discussion, and the votes were not there to say we have sufficient funds now and in the future to increase it to a mandated amount. This does not say where the projected revenues going to come from? We are hoping to get back the TAT (transient accommodations tax), right? It has been cut from the past five (5) years, losing twelve million to thirteen million dollars (\$12,000,000 - \$13,000,000) from the State in TAT monies that we should have been getting. I do not even know how we are going to pay for the new salaries coming up in the next year, Ken is right here, the Director of Finance, and we are just going over the same thing. We discussed this in budget thoroughly. I am baffled and I will not be supporting this at this time. The County cannot afford it at this time. If there are monies that come through, like the TAT, it comes through; I think we can increase the funding at any time that we want by a simple money bill. We all support it. The public supports it, but we just went through our budget and we came to a consensus that we cannot afford it at this time. We agreed with the Administration. Thank you.

Councilmember Hooser: Like many of our discussions, I think we can come to different conclusions and different facts, even, if you can believe that. This is the first time we will be discussing this and this has no impact on our budget whatsoever. This would put on the ballot and give the people the right to decide. We hear that refrain a lot around this people: "Let the people decide, let the people vote. Let us put it up there and let them decide." This is what this does. This will let the people decide on the ballot whether they want to invest a larger share of the budget in natural resources protection preservation for the future of our children; public access, open space, agricultural land, and sensitive cultural areas. These things are the only things that we spend money on that last forever. These are items that our children, grandchildren, and generations to come will enjoy. This has no impact on our budget at all. This merely gives the people of Kaua'i, the citizens of Kaua'i, the voters of Kaua'i, the opportunity to choose whether they want to allocate this money. If the people of Kaua'i in their wisdom choose not to do that, that is their choice, but this is a ballot initiative. We have not discuss this before and in the three (3) years I have been here, there has been no proposal to do this and so this is a new proposal. I am encouraging other members to approve it on first reading, and allow the public a chance to weigh in at a public hearing and further, ideally on the ballot. Thank you.

Councilmember Yukimura: Not first reading.

Councilmember Hooser: I am sorry, this is a Resolution, it is not first reading...

Council Chair Rapozo: But it does require a public hearing.

Councilmember Hooser: Yes.

Council Chair Rapozo: Anyone else?



Councilmember Kaneshiro: This Resolution has not been in front of us, but the discussion regarding how much open space money, how much money we will be putting towards open space has been a discussion we have had in the budget. I know we did a charter amendment prior and it was voted on at point five percent (0.5%). At one time when the County had money, the County increased it to one point five percent (1.5%). This last budget session was a tight budget session and we reduced it back to what was voted on. As the Budget and Finance Committee Chair, I like the flexibility of being able to decide if we want to put more money or keep it at the minimum, which was voted on. Also, I have not really seen the need as far as the Open Space Commission coming in and saying, I said this before and I will say it again, they did not come in here and say, "This is a property that we want to buy, this is how much the property is going to cost, and this is the time that we think we can purchase it in." Then we would know, hey, we have five million dollars (\$5,000,000) in our Open Space Fund, is this enough money to purchase this property that the Open Space Commission is proposing. We will still have to go through public hearing and public testimony whether people want to spend the money on that piece of property. For me, as the Budget & Finance Committee Chair, I do not see it necessary to increase it without us even knowing what project the Open Space Commission is pushing for. I enjoy the flexibility because we are still going to put money in, we are still putting point five percent (0.5%) of the total real property taxes into this Fund. I want the flexibility to know that if they do come in and we need more money, we do have the flexibility if we have an unassigned fund balance, we can get the money to purchase this property that everybody wants to do. If they come up with a plan prior to our budget, we can put it in the CIP (Capital Improvement Projects). I have it written down, Black Pot Beach was not even purchased with Open Space money. Black Pot Beach was purchased with a bond fund and playground CIP, so it is not completely necessary to have a whole lot of money in our Open Space Fund to just purchase whatever. It is important and I think if we have a plan as far as what they want to purchase and how much it is going to cost, I would be a little bit more comfortable, but right now we have seen a lot of projects...we have over thirty million dollars (\$30,000,000) worth of projects that I think we want to buy, but they never came in with a plan that says, "This is the property we think is the most pressing. This is how much it is going to cost and this is when we think we need the money by." Without that kind of information, I really cannot make a decision on...do we need more money in the Open Space Fund, I do not know because I do not know what they want to purchase. I do not know what the priority is. As a Budget & Finance Committee Chair, I want the flexibility. If they do come up with a plan and we do not have enough money, we will look at the unassigned fund balance, we will look at possibly putting it into a bond fund or CIP fund. To tie out hands and say, "We are going to put another one million dollars (\$1,000,000) into open space;" where is that one million dollars (\$1,000,000) going to come from? In the newspaper, they had a lot of parks. It may end up hurting the parks because that may be money we are spending to keep our parks nice. It is about priorities and I think if the Open Space Commission came with a priority and tell us, "This is what we want," then I think I would be a little bit more comfortable as to how much money we need in the Open Space Fund.

Councilmember Chock: My only addition would be that there has been a priority list that all of us have seen, but more recently had a meeting with our Open Space Commission Chair and our Planning Department Director to verify that they are moving forward with that priority list. That was as early as last week. If it makes any difference, the intention is to spend down the fund on the priorities that have been floated around to the Council, maybe a couple months

back, I cannot recall. The hope is that we spend that funds down and that is the only other information that I have to share. Thank you.

Council Chair Rapozo: That has been the hope for several years now.

Councilmember Kualii: I want to echo our Budget & Finance Committee Chair's comments. First and foremost, I know that I have to be fiscally responsible and put my fiduciary responsibility towards the budget. Even though we are not in budget, the budget is always on my mind throughout the year. A lot of what I heard during the election was that we needed to focus on core services, and that is what I believed too, and that is what I talked about in the campaign. We even talked about sewer infrastructure this morning and there is not necessarily funds for that. Public safety, paving of the roads, addressing traffic congestion, and like I said sewer infrastructure – those are the critical things that we need to focus on and we know that money is tight this year, and it will be tighter next year. Let us admit too that in the past when things have been on the charter to grow this County, would it not be nice to have a standalone Department of Parks & Recreation, or a standalone Human Resources, and we put that before the voters, but we do not explain to them what it costs. Everything has to give and take. Even though we all agree that open space is a high priority because it is an investment in forever, part of what Councilmember Kaneshiro was talking about also was that the Council can help also, but the Commission focus on the low-hanging fruit, going after the accesses, and getting the biggest bang for the monies that we do have. There is no other cause like housing, homeless, I mean we have all these issues we care about, and none of them have a point five percent (0.5%) set aside the way the Open Space does, thankfully because of the voters. The Council putting something on the charter amendment takes five (5) votes. I honestly do not believe it is there because we have a focus on fiscal responsibility. As important as that is to go beyond point five percent (0.5%) now, it is not the time. I could not support this even though I support us acquiring accesses as much as possible.

Council Chair Rapozo: Thank you.

Councilmember Hooser: I will have to refrain from being rude or obnoxious here, I really will. It is beyond me to hear everyone talk about, "We have to make open space and parks a priority," and then be prepared to vote against this. It is beyond me to understand how we have to...some of you talk about fiscal responsibility and this is voting against this because we want to be fiscally responsible, and yet you voted to raise taxes in the last budget. It just flabbergasted me to hear this kind of rhetoric at this table. We are not passing anything that implicates the budget whatsoever. This is a resolution that allows the people to choose. I have heard that rhetoric over and over again at this table too, "Let the people decide. Let the people choose." This is an important choice. This is a choice to allow the people to choose how they want to spend their money, whether they want to spend it on open space, parks, natural resource preservation, cultural preservation, and purchasing on agricultural land. This is giving the people the right to make very valuable choice. If we have a dedicated source of funding of one and a half percent (1.5%), this County could go out and float bonds and raise twenty-seven million dollars (\$27,000,000) immediately and make a major purchase of coastlines, agricultural lands, of all kinds of assets for future generations. It comes with having a dedicated funding source. This has no impact on the budget. This gives the people the right to choose. This Council has already, again, voted to raise taxes, and increase the budget, and this does not do that. Supporting this is

not being fiscally irresponsible. We have already done that, in my opinion. This gives the people the right to choose, to build a community for themselves and decide whether they want to spend this money on this or not, rather than us second guessing them. This puts the power into the people. I do not believe there is anything to prevent this Council or any Councilmember from championing a project and asking this Council or Administration to make it a priority to purchase. We do not have to sit here and wait for the Open Space Commission. We can be proactive in this. I urge the Councilmembers to rethink their position and think about their prior statements of letting the people decide, think about the prior statements that open space and natural resources, agricultural land, cultural resources, and the preservation thereof is a priority and backup that commitment with their vote and affirmation today. Thank you.

Councilmember Chock: I would like to add a little more that I had left out in my previous testimony. In my meeting with the Open Space Commission Chair and the Director of Planning, that they will be working on looking at improving the process on the frontend. Insuring that we have stronger direction on the forefront of moving forward on properties on a priority list and also providing an avenue for clear communication and direction throughout the process as well with the Council. That being said, one of the main things that did come up as a concern that I believe Open Space will be looking at are not only do we need to now look at the priorities that we are focused on, but how we are going to retain them. We have not even discussed those costs on maintenance on the properties that we intend to acquire. I do believe that if, the big word is *if* we are successful at acquiring the easements that we have been in discussion with, there will be a need for additional funding to maintain those easements as well, for the consideration for this body. Thank you.

Councilmember Yukimura: The preservation of open space and natural resources is a very high priority for me and that is why I voted during the budget session to keep the percentage by ordinance and not by charter amendment at one point five percent (1.5%). When the Council fails to register that kind of priority by ordinance, that is when people will look to setting it by charter – let us ask the people of the County what their priority is. Is it high enough to go to one point five percent (1.5%)? I think it is better to do it by budget, it is more flexible, and I do not agree that there is no budgetary implications. There are pretty big ones. However, how we exercise our votes on an ordinance affects whether there will be a result to the charter. I want to hear what the input is from the public at the public hearing. I also believe that we need a much more aggressive effort on the part of the Planning Department as staff to the Open Space Commission in acquiring these properties because we already lost quite a few key properties such as Po'ipū Beach Park. And one should lose them, when you acquire them it is forever, and when you lose them it is usually forever so there is a lot at stake here. I also want to say with respect to maintenance, that is why it is so important when Planning does this work, to think about the end-owner and in many cases, if we have partners in the owners, then it is good. For example, Waipā, will be in charge of maintenance and not us. Black Pot Beach Park will be part of a regular County maintenance, but it will be very efficient because it is expanding an existing park where we already have maintenance. That is the kind of thinking that we have to do. Kaneioluma, we have a partner that is working and also is capable of getting funds. You have to think about not just the purchase, but what happens after the purchase, and all of this takes really careful planning, negotiations, and strategic thinking.

Councilmember Kagawa: The fact of the matter is that this is a budgetary matter in the future. The money is not going to fall from the sky or grow on a tree. County taxpayers will pay for it. This is a different item than a repeal of a term limit. This has budgetary affects. The primary job of a Councilmember, when you get elected, is working on the budget. That is our function. Our function is managing the County's budget. The general public does not work on the budget. We do not require them to work on the budget. They do not have a vote on the budget, but we do. We take a lot of months working on this budget every year and the fact of the matter is when the Open Space Fund was increased by one percent (1%) to one and a half percent (1.5%), the County had a healthy fund balance, in the neighborhood of fifty million dollars (\$50,000,000). Today, our fund balance is under ten million dollars (\$10,000,000) and we have some obligations with the salaries that will be coming up next year that will probably gobble up that entire amount. That leaves us at a zero (0) fund balance, if you do the math. Going forward, do we expect a whole lot of revenues, I do not think any government is doing well right now in getting the reserves built up, and certainly, I want to be realistic sitting here at this table and making this important decision. If monies become available at any time and if we have a project as Councilmember Kaneshiro mentioned, that is definitely a good deal for the County, we can at any time try and see if we can gather monies together from various accounts from our available fund balance and purchase that property that is a sweet deal for the County. That can be done at any time. The big question is, if we have the money. I am tired of thinking that the only way to acquire properties is to go through eminent domain and purchase it at market value. That is not a good deal for the taxpayers; buying accesses at market value. Hopefully Jet Jasper gets confirmed today and maybe he can be that link. He can wear his number 82 union form and go in to negotiate with some of these homeowners and give us some sweet deals on some accesses that will benefit all of the people and will garner them some love as good neighbors of Kaua'i. Whether that happens, I am not sure, but I am very hopeful, I am going to have a talk with him actually. Council Chair there are many ways that we can purchase open space. We do not need to go to a charter amendment to make a decision that will affect our future budgets that we do not even know we will have surpluses. Thank you.

Councilmember Kualii: I just want to echo Vice Chair Kagawa's comments and state that clearly the cost of operating this County inevitably goes up every year and we have to make tough decisions in every budget. We should not strap ourselves now, ahead of time by minimizing what the funds can be used for. It is a priority and that is why we have the point five percent (0.5%). Putting something on the charter by this body takes five (5) votes. If this is as important to the citizens as Councilmember Hooser believes it is, the citizens can put it on the charter by themselves. It has been done before by citizens petition and I let folks know to go for it. But we as Councilmembers, the seven (7) of us that sit here have to make those tough decisions and choices. Yes, Councilmember Yukimura is correct when she talks about priorities. As a Native Hawaiian who loves the *āina*, open space access is critically important to me, but public safety, paving the roads, addressing traffic congestion, and even the sewer discussion we had earlier this morning, that is more important to me. To hear Ms. Oda talk about the *kūpuna* who may have to convert their sewer cesspool to septic if the Legislators pass the law, but not having the income, they barely struggling to get by with a limited income, medicine, food, or what have you. Those are more of a priority to me. As much as I think this is important, my decision has to focus on the budget and making sure the funds are available. We did not raise taxes. We voted for the real property tax rates to remain the same. Yes, property values went up, great for everybody that

that happened to. And yes, that may have mean that people paid more taxes, but this Council did not take any affirmative action to raise the real property taxes. Now the fact that the County had a little more money because of the assessed values going up, that is a good thing because operations cost more every year and we still have to make those tough decisions about cuts. That will be even tougher next year because some of us were willing to do more cuts, but more of us were not. This is that kind of a decision. This is not about "who cares about the *āina* and who does not."

Councilmember Hooser: My facts were challenged and I would like to point out that the charter, I believe, requires us to set tax rates and we set tax rates, which I voted against. We set tax rates during the budget that raised taxes and means the County Council raised property taxes and so we can play around with words. It is often a political way to raise taxes without raising taxes. Property values went up and our job is to set rates. We set the rates at a rate that raised taxes. I just find it increasingly impossible to understand the dialogue that goes around this table and with all due respect and Council Chair Rapozo said one time, that when you say, "With all due respect, look out here it comes," to be willing here and speak in support of letting the choose term limit reduction, and then say they need to go door-to-door to gather signatures for weeks and months, and then get challenged at the Council – who knows what will happen for their right to choose to direct one percent (1%) toward open space preservation, I just find that it is hard to understand. We are saying here at the voters are smart enough to choose whether or not to repeal term limits, but they are not smart enough to decide on whether they want to spend another one percent (1%) of open space. I would respectfully ask that we allow the public to at least have a public hearing on this. The testimony that was submitted, not one (1) person opposed it. There were no opposing testimony and we are on the edge of possibly not only allowing the public the right to speak at a public hearing let alone vote it on the ballot. I would encourage the Members to...we talked about courtesy earlier, let us give the public the courtesy to weigh in on this at a public hearing. Thank you.

Council Chair Rapozo: Thank you. Is there anybody here to testify on this matter?

Ms. Fountain-Tanigawa: Council Chair, we have two (2) registered speakers.

Council Chair Rapozo: Let me make my comments because I just want to shed some light. What this really is, is an initiative for the public, but without going through the initiative process. It is not forcing the public to go get the signatures and put it on the ballot. At the end of the day, this is an initiative, an attempt to get the public to vote on a matter. Our charter is very clear that the initiative power or the referendum power for that matter, cannot extend into budgetary matters. You cannot let the public in an initiative determine budgetary matters through that process and it makes sense. The charter amendment, to change the charter takes another election and it has to pass and if it does not pass, the fact that the people decided and we saw it in the 'Ohana Amendment. When the 'Ohana Amendment went through the public overwhelming supported the cap on taxes, and we know what happened to that, it costed us money because we had to go fight it and the judge ruled that you cannot allow the people to have a say in matters that pertain to the budget because they do not have the ability, or we do not have the ability to unwind it if it causes some fiscal issues. It makes sense. So that is prohibited. The public cannot go out and get an initiative petition and come and

put anything on the ballot that pertains to budget, capital budget, operating budget, salaries, positions, and that is in the charter. This is basically circumventing the petition part, the signature part, but still putting the decision of a budgetary matter, and capital improvement matter in the hands of the voters, which in my opinion the charter prohibits. I do not need a legal opinion because for me it is just the practicality of it, that in fact if this should pass, then we are bound by that...because it is going to pass...who is not going to support open space? At the end of the day it does have budgetary implications to this body, to this County, and should the County need to tap into money, they will not be able to because it is a charter amendment. For me it is real simple, as much as I would like to support it...several of my colleagues have said, if a project that come up here, any open space project, regardless of what it is. If it is of importance and the public supports it, this body will provide the funds. The County will provide the funds. You do not need a charter amendment. You do not need to go into the Open Space Fund, it is a great thing to have, and it looks really good that we set aside the money, but like what Councilmember Kuali'i said of the issues of housing, homelessness, public health, and public safety, we do not have a dedicated fund. We do not have a percentage dedicated. I think what we have done is a good thing. At any given time, we can change it. All the charter says is that it is a minimum of half a percent. As Councilmember Kagawa talked about, we set it up a while back to one in a half percent and as times got tough, the Mayor said, "We have to cut that back because we need the fund," so it was dropped back down to the minimum, which was the charter requirement. My point is if you read 22.02 in the Charter, it is very clear, "the referendum power shall not extend to any part or all of the operating budget or capital budget." This is not technically an initiative because it is not coming from the people, but the Council now is attempting to put that decision making into the public, which I believe would be a counter to what the charter is intending. Councilmember Hooser.

Councilmember Hooser: Can I clarify something with the County Attorney?

Council Chair Rapozo: Okay. I am not sure if...

Councilmember Hooser: I originally introduced the charter amendment that is on the books now establishing that half a percent, when I was on the Council before. The Council has already done this once before, and we are operating as if it is the law and so there is no difference than what was done before.

Councilmember Yukimura: That is right.

Councilmember Hooser: We are changing that, but we had legal authority fifteen (15) years ago and we have legal authority today.

Council Chair Rapozo: Whether or not it is legal or not in my opinion, to me, putting the decision of that will infringe on the budget going forward in the hands of the people, which I believe 22.02 intended not to. When it passed back the first go around and I commend you for doing that, we did not have the zero (0) surplus. We did not have that problem.

Councilmember Hooser: I hear your argument as a point of law. You are saying by looking at the charter and we cannot do this, that is what I heard you say, and I dispute that. We are legally entitled to do that because we have done it before. Whether as a point of policy, you do not agree with that, that is one thing,

but as a point of law, unless one of our County Attorney's wants to dispute what I just said, we are legally entitled to do it. We have done it before and it has never been challenged.

Council Chair Rapozo: Maybe I can help this. I am not saying that it is illegal to do. What I am saying is that the attempt to put it into the voters hands in an election, circumvents the initiative process, so that really does not apply to 22.02. 22.02 only applies to the initiative, if the public came forward with a petition. What I am saying is the intent of 22.02 was to prevent the public from making decisions that may impact budgets going forward. That is all I am saying. Philosophically I believe that should not be in the voters' hands. That should be in the hands of the Council sitting at the time that the budgets are discussed. I am not arguing that it is illegal, because that is not what I am saying. I am saying, using the rationale behind 22.02, I believe any decision that is made to restrict funds should be held for this body and not the public.

There being no objections, the rules were suspended.

STEPHEN F. HALL, First Deputy County Attorney: I do not necessarily have an opinion ready to go on this matter. I would appreciate some time to review the intricacies of what you all are talking about because it is somewhat a matter of wording.

Councilmember Hooser: Thank you. If I may continue, Chair?

Council Chair Rapozo: Sure.

Councilmember Hooser: Along the same lines, I believe if you look at charter amendments that have been passed in a variety of ways; they all had budget implications whether it is establishing a Humane Resources, Parks Department, or whatever. I do not believe budget implications precludes the public from decision making. One could argue that getting rid of term limits has budget implications because if we had people there for thirty (30) years, they are going to have more retirement and more income, that type of thing. Again, if it is a matter of policy and you do not believe that the public should be voting on items like this, is one thing, but I do not believe there are any legal prohibition to preclude us from doing this.

Council Chair Rapozo: Like I said, I agree with you, I am not saying that it is illegal.

Councilmember Hooser: And I would...since I have the floor, ask again that the public be allowed to say what they thought. This is the first time the first time that it has been on the agenda. The normal process would be to have a public hearing, where the public has their time, they are notified to come and talk on it, and then we make a decision based on that. We talked about courtesy earlier, Council Chair; I think that is a fundamental courtesy. I voted in support of repealing the barking dog ordinance on first reading at a courtesy to the body. I voted no occasionally on first reading, but on Bill like this when there will be no opportunity otherwise for the public to weigh in, I would ask Members to at least allow the public the opportunity to weigh in at the public hearing. Thank you.

Council Chair Rapozo: The rules are still suspended. Please call the first speaker.



Mr. Bernabe: I am going to walk the line, because I am about to agree with two (2) different opinions. One, I totally agree with Councilmember Kagawa. We need to press the State for some TAT money. What is going on? They are not even giving us rent-a-car money for the roads. But also I agree with Councilmember Hooser. If you have an increase body of money on top of cache of properties, you would be able to lean for bonds and whatnot. If you really do study rich people, this is how they operate. They spend other peoples' money, I hate to say it like that, but they go out and they get an agency to lean against your money, and that is how they keep themselves above water and the rest of us is always drowning. We do not have that capita and we are not able to say, "Oh, look I have fifteen million dollars (\$15,000,000) in the bank, can I lean on it?" But that is absolutely how the real world works. But at the same time, let us go in aggressively and attack the State, this TAT issue is ridiculous. Even if it is not for all of it, let us at least get half of it. The State just gave these folks three point one million dollars (\$3,100,000) to do the well project, right. That is three point one million dollars (\$3,100,000) out of our twelve million dollars (\$12,000,000) from TAT. I am just saying if they are going to go an allocate it for specific little things like that, we should be aggressively as a seven (7) member Council along with the Mayor, along with me being a public member, I will write a letter. Let us fundraise, I do not have money to fly up to Honolulu other than jujitsu tournaments, but I would fundraise and back you folks up, as our delegates, to go up there and say, "Look, we are suffering, you folks are cutting us off." You have four (4) out of ten (10) pictures of Kaua'i on your tourist ads, I have been in Missouri, New Jersey, and you see a commercial for Hawai'i, the first picture you see is Kalalau, and Waimea Canyon. Those are two (2) staples of the State's tourist promotion and they are going to take our money from us? I agree with both positions. This is a tricky one. I want to support more money for this fund. I would also like to see a voter initiative that allows us to spending on other things like acquisition of waterways and things like that. I think we are a hamstring on what we can spend it on, on top of that.

Ms. Fountain-Tanigawa:

The next speaker is Anne Punohu.

Ms. Punohu: Every year, I listen to all of you talk at your campaign speeches and every single one of you says every same thing every year. "More open space. We need to preserve our environment. We need to take care." Councilmember Kualii is a dear friend of mine and I know he cares about the *'aina*. This is ridiculous guys, come on...I was here for the original part of – we set aside this fund for open space. We all know that our open spaces are shrinking by the minute. They have shrunk since we have been sitting here today because people are coming here and buying up our island and there is nothing left. We have some of the richest people in the world right now who have purchased large chunks of our island and somebody here is telling me that we do not have money in the budget of our County and we are broke. What? Come on, you guys, we all know that this is not true. You all know that you can tax these people. Our basic funds to do this thing is going to skyrocket, TAT, we have to go after that, absolutely, however, to take away from the voters and make us go and strung out there and go hustle like we have to do every time when you do not listen to us in the first place. You guys have empty seats here and somebody else is sitting in your chair since you believe that now, Councilmember Kagawa, we have enough shifting going on...this is irresponsible. We are not children. We can make perfectly good decisions and you can put it in our laps because we decided every year if you sit in these chairs or not. And if you trust us to put you in these chairs, you can trust us enough to take it back to the people where it belongs. This is a government by the people. This is run



by the people, and you are our people too, and we love you guys, but I am going to tell you that this would be highly irresponsible. If you folks want playing fields for your kids, you want to have football fields, baseball fields, a place where the kids play basketball, how about parks for our children. Here is something for you...here is a good kicker. My daughter is of course not with us anymore, and is laying in a graveyard that is almost completely full. Every time I go in there are three (3) more rows. There is no room in the Lihue Cemetery. Where are you going to bury our people who die constantly all the time, and as our population increases, we need more open space. This is a necessary thing. It is the same for me as housing, which I am very passionate on, all these issues you have said are important, yes, but this stands equally with them. The very fact to have open space and places to go with your family, play with your kids, that is our mental health. That is part of taking care of the people of this island. We have enough pressures to deal with. We need the open space and we need this to be taken to the people and let the people decide.

Council Chair Rapozo:  
speak?

Any questions? If not, anyone else wishing to

Mr. Bernabe: I am going to go back to this TAT issue because earlier we were talking about this well and Kouchi's name was all over this initiative, but he is supposed to be the guy that we pressing to get this TAT back. You folks, as the County Council, by me telling you, "Please County Council Chair, go and press Kouchi for some TAT tax," and now it is on the record, I am asking you officially. Press this guy. Tell him to bring it up on the House or Senate floor, I should say. The fact that he will be able to put three point one million dollars (\$3,100,000) to a group of winners, right, he is picking winners, just like what he does with Mike Smith and other guys, but when it comes to an island-wide thing like this...just the end of the road, think about this, all the renter cars at the end of the road, we are not getting the money. How can we get open space? I want that one point five, that would be great. I really think Councilmember Kagawa is on the right track because this TAT money is technically been taken from us, and they are not utilizing it right. They are not even doing the rail right. I think we should just put on the gloves and challenge the State once in a while. Do not be afraid of them. I live in this County, I am challenging you folks to represent us at the State level. Tell Kouchi, the game is over and we want the island to win, and not individuals. Do you want me to come back next week with a list of the folks he helps out? I will do it. I will call the IRS (Internal Revenue Service) and tell them, "Let us get the track," and I bet you money I can find it. This is the coconut wireless, we know everything. These folks think we do not know? The reality is, he should be getting our money for this kind of things and other things, not just for specific people. I just wanted to say that. I am sorry.

Council Chair Rapozo:

I think he watches this too.

Mr. Bernabe:

Good, I hope he is.

Council Chair Rapozo:

Anyone else wishing to testify? If not.

The meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Any further discussion? Matt, you talked about the TAT. TAT is brought up a lot and I can tell you that one of the issues that the State...believe me, as the President of the State Association of Counties have to go up and lobby, and I lobby hard, but I will tell you folks, when County's reduce

taxes and basically show the State that we have all this money where we can cut taxes and do things. We are not supporting our argument that we need more of their money. That is their perception. I am not telling you that is mine, I agree with you, we should be getting more, but I am just telling you what the perception is up there. If they see us reducing taxes, giving money away, they are saying, "Why are you asking for more money?" You are saying you are broke, but you folks are giving taxes back. I do not necessarily agree with that, but I am just telling you that is the response I get when I am lobbying. It is the truth. That is their position and like I have said numerous times, you do not want to upset them because they write the TAT check. We just have to be careful when we do that. We talked about getting this to a public hearing. Councilmember Kagawa talked earlier; this issue was in front of the public in April 2015, not putting it on the ballot, but the need to raise it to one point five. We went through that in March. March 25 was the first reading, public hearing was April 22, then it went to the Committee on April 29, and then it was passed on final reading on May 6. That is less than three (3) months ago or just about three months ago. We had the discussion. We had the public testimony. The public did chime in and we have gotten a lot of testimonies via writing and as far as phone calls. I understand that people want us to put more money aside for open space, but at the end of the day we have to balance the budget. That is what the public has to understand. That changes year to year. It is not something that we know is going to be for the next five (5) years. The Council, Mayor, and the Administration have to have the flexibility to move around these funds, or fund or not fund certain issues. Now, when you do a charter amendment, when it is in the charter, we have no flexibility. That money will go where the charter tells it to go and where do we make that up? I am not very pleased and I appreciate Councilmember Chock, I know he is taking an active role with the Open Space Commission and I appreciate that, but we have not spent a penny from that fund. What is the sense? We are taking it away from the General Fund because we want to show the people that it is a priority, but we are not spending it down. We can keep throwing money at it, but if we are not making the decision to actually go out and purchase something, you are taking that money away from the General Fund that could be used for housing...we have to make that up somewhere because we do not have a surplus like we used to. In the old days, it was never a problem because you always had that surplus that you could tap at the end of the year to carry you into the next year and we do not have that anymore. We do not know what it will be. Every million dollars counts. It does. That is just the reality of it. Any Councilmember can introduce a bill to raise that number for that year to one in a half percent, one percent, one and a quarter percent...and then the Administration has the opportunity to come up and tell us, "That is what the fiscal impact will be to this County. This is what we are going to have to do to make that adjustment." We will not have that opportunity if it is a charter amendment, and I think the people have to understand that. It is very easy to say, yes, we want to do it because it is a priority, but so is all the other problems that face our island. I have heard the testimony, I have read it, again, this is only three (3) months old. We just had it here three (3) months, and for me, it is a philosophical issue, not so much the issue of whether or not it is a priority. For me, it is a priority, and if it is a priority, then it is the Council that needs to set that rate and not the charter. With that, the motion is to approve.

Ms. Fountain-Tanigawa: The motion is to schedule a public hearing for September 2, and then referred to the September 16 Council Meeting.

The motion to schedule a public hearing on September 2, 2015 and refer to the September 16, 2015 Council Meeting failed, at the meeting of the Council of the County of Kaua'i held on August 5, 2015, by the following vote:

FOR SAID MOTION:	Chock, Hooser, Yukimura	TOTAL – 3,
AGAINST SAID MOTION:	Kagawa, Kaneshiro, Kualii, Rapozo	TOTAL – 4,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

There being no objections, the Council recessed at 5:39 p.m.

The meeting was called back to order at 5:49 p.m., and proceeded as follows:

Council Chair Rapozo: Can we have the next item, please?

Ms. Fountain-Tanigawa: We are on Resolution No. 2015-54.

B.C.: Please turn on your microphone.

Ms. Fountain-Tanigawa: We are on Resolution No. 2015-54.

B.C.: Wait a minute.

Council Chair Rapozo: Are you okay? We will take a short recess.

There being no objections, the Council recessed at 5:50 p.m.

The meeting was called back to order at 5:51 p.m., and proceeded as follows:

Resolution No. 2015-54 – RESOLUTION CONFIRMING COUNCIL APPOINTMENT TO THE PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES PRESERVATION FUND COMMISSION (*Jett James Jasper – At-Large*): Councilmember Kualii moved for adoption of Resolution No. 2015-54, seconded by Councilmember Yukimura.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for adoption of Resolution No. 2015-54 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Yukimura, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item.

Resolution No. 2015-55 – RESOLUTION AUTHORIZING A PERFORMANCE AUDIT OF THE KAUAI HUMANE SOCIETY, PURSUANT TO SECTIONS 3.12(B) AND 32.02(A)(2), KAUAI COUNTY CHARTER: Councilmember Kuali'i moved for adoption of Resolution No. 2015-55, seconded by Councilmember Kagawa.

Council Chair Rapozo: Discussion? Let us start with the public testimony. This poor couple have been waiting here all day. I am not sure if you want to testify on this item. Councilmember Kagawa.

Councilmember Kagawa: I am not aware of the details of some of the conflicts going on, but I know that there is something major that is going on that needs some documentation to either approve or disapprove some of the claims that are being made. I do not pass that area as much as I used to, but there are people dedicated and holding signs, spending many hours there, and it is concerning to have...who would spend hours and hours in groups if it is not that serious. I think it is worth doing a performance audit since we fund the Humane Society to see where we are at. I hope that it will be money well spent that would either provide us with confidence that the Humane Society is spending moneys wisely and performing well, or it will show that there are significant improvements that are needed. We fund the Humane Society a large amount every year from our budget, and it is for a very important service. I remember when my dad used to work for the County, we had the dogcatcher and this and that, and now we have the Humane Society doing it. I will bring up one (1) incident that happened recently, and I was a little concerned when I heard that there was an abandoned dog near an office building which has a dentist's office. The dog was a gray pitbull and it was very skinny, malnutrition, and used a broken rope-leash. The people near that premises were feeding and giving water to that dog, and I guess the dog felt...I am not sure if the dog was going through some trauma or what have you, but it was growling at people trying to help this dog. Numerous calls were made to the Humane Society because of fear that the dog might bite somebody near that office building. It would just hang in that premises. I do not know if it was left there, and felt that the owner was coming back, but when they called the Humane Society, the Humane Society said that they only have one (1) person who picks up and we will do it, if we can, and they never came. If they went there, maybe the dog was not there, but every time the people in the office building would say the dog was in that same spot. It concerns me that just the basic service of picking up an abandoned dog could not be accomplished in a busy area. Are we waiting for the dog to bite a child? That incident was concerning to me. Beyond that, I try not to spend too much of my time worrying about the Humane Society, I trust their judgment in running that facility, but I will be supporting this performance audit.

Councilmember Yukimura: I have a question for the Attorney's Office.

Council Chair Rapozo: Is the attorney here?

Councilmember Yukimura: He just walked out.

Council Chair Rapozo: Can somebody get the attorney, please? Any other discussion before we get the attorney?

Councilmember Chock: I am going to be supportive of the Resolution. I think it does fall within our purview to look into anything we attribute money to. The first thing is the cost which we had some discussion on that I wanted to clarify that it is not the hundred fifty thousand dollars (\$150,000) that has been stated

previously. The other portion is that I feel strongly that what we provide is not a small amount, it is just a part of their operations, and so I want this...my request would be that this audit has an emphasis of what it is we attribute funding towards in terms of the performance audit. The Kaua'i Humane Society has a huge *kuleana*, it is not an easy job, and I am not sure if it is our job to look at all aspects, which has come up in some of the testimony, in terms of supporting the audit. It seems that we have been looked at too to solve some of these larger issues that I do not necessarily believe is our *kuleana*. If we are providing funding to non-profits or an external program, we should be able to call on these kind of performance measures and get feedback from the people or organizations we give money to. My preference would be that the funding that we have for audits will be focused on County operations, but again, I will support this because it is within our purview. Thank you.

Council Chair Rapozo: Mr. Hall, Councilmember Yukimura had a question. I am not sure if you are prepared to answer it. Is Mauna Kea around?

There being no objections, the rules were suspended.

Mr. Hall: Mauna Kea is not around, but thank you for waiting for me.

Councilmember Yukimura: Thank you very much. You have explained to me that the section under the County Auditor about performance audits is not exclusive, and therefore the Council can conduct audits through its powers described in 3.12.

Mr. Hall: Yes.

Councilmember Yukimura: I am going to follow-up on Councilmember Chock's question. Under either provision, are we limited to, in terms of the scope of the audit to the program, which is funded by County moneys?

Mr. Hall: When you had talked about scope earlier I did mention that I would like to...because it is a nuance area, I would like to follow-up on that particular issue through a written opinion.

Councilmember Yukimura: I actually asked for that in writing. You cannot say that we are limited to the programs, which our moneys fund.

Mr. Hall: My understanding of the contract is that it funds quite a bit with the Humane Society, so I would have to look into further how that works when the Council wants to call for an audit.

Councilmember Yukimura: Okay. I am saying either way. Whether the Council is calling for an audit or through the County Auditor.

Mr. Hall: Either way, that would be said as part of the scope of the audit, and so I would want to look into further...whether it is reserve specifically for the areas that the money touches or the program as a whole.

Councilmember Yukimura: When you said, "The program as a whole," you are talking about...

Mr. Hall:  
the Kaua'i Humane Society.

I presume you are referencing programs with

Councilmember Yukimura:

That are not funded by the County.

Mr. Hall:  
further, is what I am telling you.

Right, and so I would want to look into that

Councilmember Yukimura:  
the scope determined?

If we do it under the County Auditor, how is

Mr. Hall:  
will determine the scope.

The Auditor or entity that the Auditor hires

Councilmember Yukimura:  
hires?

The Auditor or the agency that the County

Mr. Hall:  
Auditor.

That the Auditor hires, if you go through the

Councilmember Yukimura:  
through the Auditor.

Okay, so this Resolution is proposing to go

Mr. Hall:  
through the Council, but the Council can ask the Auditor or an outside firm to do this.

It is proposing under 3.12, I believe, to go

Councilmember Yukimura:  
administered by the Office of the County Auditor," that is what it says in the Resolution.

"The audit shall be contracted and

Mr. Hall:  
Council may at any time provide for performance audit of any of all office," and then it goes on to say, "To conduct a performance audit for the hiring of a qualify in-house auditor or both."

Okay, under 3.12, I agree with you. "The

Councilmember Yukimura:

Which would be the County Auditor.

Mr. Hall:  
the hiring of a qualifying auditor or both," so the qualified auditor would be the outside auditor, and the in-house would obviously be the auditor for the County.

Right. Well...

Councilmember Yukimura:  
through the Office of the County Auditor.

It looks like the Resolution is written to go

Mr. Hall:

Okay.

Councilmember Yukimura:  
scope will be determined by the Auditor or whomever the Auditor selects.

And you are saying that if we do that, the

Mr. Hall:  
that I would like to follow-up in a written opinion.

That is what I believe, but I also mentioned

Councilmember Yukimura: Are we able to do that when there is not an active auditor in place?

Mr. Hall: That is a practical matter that I think you all would need to resolve in terms of timing for when this Resolution will take effect.

Councilmember Yukimura: I have a question for the introducer of the Resolution. Chair Rapozo, is it your intention that we wait for the Auditor's Office to have a person in place?

The meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: No.

Councilmember Yukimura: Then we will not be doing it under the Office of the County Auditor.

Council Chair Rapozo: It is the Office of the County Auditor. They still have staff there that will be responsible for doing the scoping and procurement.

Councilmember Yukimura: But there is no staff that has the Auditor qualifications.

Council Chair Rapozo: I am sorry.

Councilmember Yukimura: There is no staff that has the Auditor qualifications.

Council Chair Rapozo: We are going outside for an auditor.

Councilmember Yukimura: Then we would be doing it under 3.12 where the Council is going out for an auditor and not under the County Auditor. In that case...

Council Chair Rapozo: We are going on the 3.12.

Councilmember Yukimura: Yes, but...

Council Chair Rapozo: That is our authority.

Councilmember Yukimura: But we cannot do it through the Office of the County Auditor without somebody with an Auditor's qualification, to do the scope. If we are doing it through our power as a Council to hire an outside auditor, which I believe the County Attorney has said we are able to, than the scope of the audit shall be in accordance with the terms of an assignment. I am reading from 3.12(B) under performance audit, "referred to the Office of the County Clerk by the County Council or a written contact to be approved by the Council." I have asked Mr. Hall, what are the requirements for an assignment? Is this Resolution qualifying as an assignment? Well, it is obviously not a written contract. And the Council would have to approve it.

Council Chair Rapozo: That is what we are doing today.

Councilmember Yukimura: Is it your intention that since it is not a written contract this would be an assignment as required by the Charter.

Council Chair Rapozo: I am just saying we are using our authority under the Charter and as the Charter allows us to go through an in-house auditor or an outside auditor; we are going to use the Office of the County Auditor to facilitate the procurement.

Councilmember Yukimura: I do not believe you can do that.

Council Chair Rapozo: Then we would not be able to do our CAFR (Comprehensive Annual Financial Report), following your rationale.

Councilmember Yukimura: No, no, the financial audit is different.

Council Chair Rapozo: Why is it different?

Councilmember Yukimura: It is covered under another section 3.12.

Council Chair Rapozo: No, it is in the auditor section now.

Councilmember Yukimura: No, but it also says if the County Attorney's opinion is true, you can do either way: through the Council or through the Auditor. If you do it through the Council, you have to follow the procedure defined under the Council's authority.

Council Chair Rapozo: And I believe we are. We disagree, but I believe we are.

Councilmember Yukimura: Well, I think we need to have...then let us have that confirmed by the County Attorney, that the Resolution is in fact sufficient to be an assignment referred to the Office...

Council Chair Rapozo: I already have a County Attorney's opinion that was written, that you requested Councilmember Yukimura.

Councilmember Yukimura: It does not answer the question.

Council Chair Rapozo: Well, it answers mine. It is sufficient for me, and I do not know if everybody got a copy of it, and we obviously cannot discuss it because it is an opinion.

Councilmember Yukimura: Let the Deputy then answer the question on the floor.

Council Chair Rapozo: I do not know if he is prepared. Are you prepare to do an opinion on the floor, Steve?

There being no objections, the rules were suspended.

Mr. Hall: No.

The meeting was called back to order, and proceeded as follows:



Council Chair Rapozo: Thank you.

Councilmember Yukimura: That means we do not have an opinion. We do not have an answer.

Council Chair Rapozo: I have mine right here.

Councilmember Yukimura: No, that is not the question. The question is whether this Resolution suffices as an assignment required under Section 3.12(B).

Council Chair Rapozo: Okay, and that is fine. If you are not comfortable, Councilmember Yukimura, you can vote no. If everyone is not comfortable, you can all vote no. You can get ask for a deferral, whatever you want, but he is not going to do an opinion on the floor, I have read Mr. Trask's opinion from the request you submitted and...

Councilmember Yukimura: But it is not the question. The question is come up now because I have accepted their opinion that it is a dual authorization now because it cannot be done by an auditor, because we do not have an auditor in place, then it has to be through this other section which requires a referral. I see a lot of value with having an audit, but I think it has to be done correctly. If the County Attorney's finds that the Resolution is not sufficient, why would we pass it before we find out what the requirements are?

Council Chair Rapozo: Steve, like I said we have had intensive discussions with the legal department for a while now. This is not something I just sprung on today...

Councilmember Yukimura: Why did you not ask for a legal written opinion? That would have settled it all. We usually say that would be important to do and we do not have a written opinion.

There being no objections, the rules were suspended.

Mr. Hall: Just to clarify, the opinion of my Office is that this Resolution is sufficient to go forward, but if there are concerns, we would happily look into them further, with these more specific questions that have been presented today.

Council Chair Rapozo: Thank you.

Councilmember Yukimura: Steve, this suffices as an assignment?

Mr. Hall: My understanding from our Office is that this is a satisfactory Resolution; however, if you do have further questions, we would be happy to answer them in a written opinion that is well researched.

Councilmember Yukimura: And what if it is not sufficient as an assignment, it is not a contract.

Mr. Hall: That is correct.

Councilmember Yukimura: Then what will happen to this...there would have to be a subsequent assignment?

Mr. Hall: I guess that could be the truth, if someone were to challenge it, but that is generally how that would go; someone would have to come forward and challenge it.

Councilmember Yukimura: Well if you say that it is not an assignment, then would we not amend the Resolution?

Mr. Hall: I do not believe I said it was not an assignment. What I am saying is that this Resolution seems to be appropriate, but with the questions you are presenting, if you would like, I will research it further. I really do not feel comfortable answering more questions I do not have answers to on the floor.

Councilmember Yukimura: Would you answer this question, that we need to have an assignment or a contract.

Mr. Hall: That is true, pursuant to the Charter.

Councilmember Yukimura: Okay. And it has to be by the County Council, not by...that is what it says.

Mr. Hall: Again, I really would like to refrain from giving full opinions on the floor, given the concerns you have raised.

The meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: Alright, thank you. Chair, I think we need to defer until we get a clear opinion from the County Attorney as to whether an assignment is required or a contract to define the scope of work.

Council Chair Rapozo: Again, I am satisfied from the information I got from the County Attorney over the last, I do not know, three (3) meetings I have had with them and our staff, and I think Mr. Hall just said that the Office just cleared the way for the Resolution. I am satisfied.

Councilmember Hooser: I have a question.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Is there any other documents from the County Attorney besides the one that was a response to Councilmember Yukimura?

Council Chair Rapozo: I do not believe so.

Councilmember Hooser: Okay. I went over that and this may be a process question between the Chair and the County Attorney's Office. It starts out saying they need two (2) weeks for a work assignment, when it is impossible for us as Councilmembers, we get the notice and then there is a meeting in five (5) days, so if we had questions from the County Attorney and they are demanding two (2) weeks to respond to us, then that is a problem. Do we need to be more rigid in our standards in terms of getting County Attorney opinion's before that, but I did notice and was taken back by the, "I do not have two (2) weeks to do it. This was a last minute notice." At the same time, we only have six (6) days notice ourselves.

Council Chair Rapozo: Yes, I understand that. That is a point well taken, and we will bring that up with the County Attorney's Office. Any other discussion?

Councilmember Yukimura: Yes, Council Chair, I move to defer until we have an opinion from the County Attorney, that gives us guidance.

Councilmember Yukimura moved to defer Resolution No. 2015-55 until a County Attorney opinion is provided to the County Council.

Councilmember Yukimura: Will you second?

Councilmember Hooser seconded the motion to defer Resolution No. 2015-55 until a County Attorney opinion is provided to the County Council.

Council Chair Rapozo: Okay, that ends all of the discussion. Normally, we clear up the discussion first.

Councilmember Yukimura: Well, if you want to have further discussion, I will withdraw it, and have further discussion.

Council Chair Rapozo: Well, unless everybody is done. If everybody is done with discussion, that is fine.

Councilmember Yukimura: Would you like to have discussion, I will withdraw the motion.

Councilmember Hooser: Yes, I would like to have discussion. I withdraw my second.

Councilmember Yukimura withdrew the motion to defer Resolution No. 2015-55. Councilmember Hooser withdrew the second.

Councilmember Hooser: I have a question.

Council Chair Rapozo: Please.

Councilmember Hooser: Is this time sensitive in nature?

Council Chair Rapozo: I think the time sensitivity is not much of an issue. It is just that every day that we wait, the stuff in the media, internet, and Facebook, continues to grow. I try to get this on as quick as I could, but our staff took a lot time doing the research necessary. The risk assessment that they put together and worked really hard on, and it just takes time. I think the quicker we act, the better it will be for the community. Like I said earlier today, I am hoping that the audit...and to answer Councilmember Yukimura's question as far as how far the audit reach. The audit can only reach the areas that our dollars reach, that is it. We cannot go beyond that. We do not have the authority to go beyond that. The management style, the scheduling, and things like that, is a separate issue that this audit will not touch, but what the contract requires, will be. And the legal compliance of the services that we fund will be looked at. I think the quicker we move the better. There is still another process going through as far as procurement that we have to go through.

Councilmember Hooser: In general, I am supportive of the Resolution and believe that we need to get answers to these questions, but I do want to get a little bit clear on the process. This is the only hearing that this Resolution will have, is that correct?

Council Chair Rapozo: Unless there is a deferral.

Councilmember Hooser: Assuming this passes, who administers...who goes out and procures or manages? We have a preliminary scope of work, but who supervises that? Can you walk us through how that is supposed to happen?

Council Chair Rapozo: It would be the Office of the Auditor.

Councilmember Hooser: So the Office of the Auditor gets this Resolution and then the Office of the Auditor procures?

Council Chair Rapozo: Correct.

Councilmember Hooser: Do we, as the Council, have an oversight of the Office of the Auditor in terms of the actual scope of work?

Council Chair Rapozo: No. It is no different than how the CAFR is being contracted right now. The Auditor's Office is handling the procurement of the financial audit.

Councilmember Hooser: Okay, thank you.

Council Chair Rapozo: If I am misspeaking, Jade, please feel free to correct me, but that is how I understand it to be.

Councilmember Hooser: How do we know what the price is going to be?

Council Chair Rapozo: Once the Office of the Auditor...if this should pass then she will go out and do an assessment, a pre-audit assessment, and we will have the numbers.

Councilmember Hooser: But, is there a cap? We talked about the hundred and fifty thousand dollars (\$150,000), but it is only going to cost seventy thousand dollars (\$70,000), once we give the Auditor the go ahead, can they spend up to one hundred fifty thousand dollars (\$150,000)?

Council Chair Rapozo: They can spend whatever the contract is for.

Councilmember Hooser: So, they go out to bid, and then have to pick one.

Council Chair Rapozo: Correct.

Councilmember Hooser: In theory, it could be a hundred and forty-five thousand dollars (\$145,000).

Council Chair Rapozo: In theory, it could.

Councilmember Hooser: Yes.

Council Chair Rapozo: What happened with the CAFR, the financial audit, the Auditor's Office came to me and gave me the numbers, and it was obviously what was budgeted for, so there was no problem. I cannot imagine if this thing comes back at a hundred and seventy-five thousand dollars (\$175,000), I would not sign off on that.

Councilmember Hooser: We have the ability to say no...

Council Chair Rapozo: On the money.

Councilmember Hooser: ...If the bid comes in too high?

Council Chair Rapozo: Correct.

Councilmember Yukimura: Not "we."

Councilmember Hooser: The Chair, you have the ability.

Council Chair Rapozo: Yes.

Councilmember Hooser: If it is a hundred and forty-five thousand dollars (\$145,000), can you say that is too much?

Council Chair Rapozo: I will say it is too much if it is...

Councilmember Hooser: I mean, legally, you have the authority to say, "It is too expensive?"

Council Chair Rapozo: Correct. When I asked the Office of the Auditor, I believe it was...I know the Clerk is saying under seventy-five thousand dollars (\$75,000), but I heard less, but I am just going to go with the Clerk's number with "under seventy-five thousand dollars (\$75,000)."

Councilmember Hooser: I am sorry...

Council Chair Rapozo: No, please.

Councilmember Hooser: ...Councilmember Yukimura, if you could just let me finish up this train of thought. Because of the situation with the Auditor's Office, and because we are not around them on a regular basis, I am not as familiar with the management of that Office as I would like to be. Do we have...obviously we have somebody there...

Council Chair Rapozo: Two (2) people present at that Office.

Councilmember Hooser: And they have the capacity, ability, and experience to manage the procurement process?

Council Chair Rapozo: Yes. Stephanie is our analyst over there, the Project Analyst, which is her function. She manages the procurement and the contract.

Councilmember Hooser: Has she done this before in other cases?

Council Chair Rapozo: Yes, she has been doing it all along.

Councilmember Hooser: Okay, thank you.

Councilmember Yukimura: Has she done it with a performance audit? The CAFR is something that we have done every two (2) years, forever. So there is very standardized procurement documents and so forth. A performance audit is very different, especially in such a controversial area and the need to delineate those areas that are legitimate within the scope of the County's reach. Does that Office have the experience and authority? I do not think any of the performance audits were authorized and initiated without a County Auditor present in the Office.

Council Chair Rapozo: We just did the HR (Human Resources) and the Cash Management Audits. Those were two (2) audits that we just had, Councilmember Yukimura.

Councilmember Yukimura: We had the results of them.

Council Chair Rapozo: Those were performance audits.

Councilmember Yukimura: Were they initiated without an auditor?

Council Chair Rapozo: Yes, I mean those were part of the audit plan from the Auditor, but as far as the management of the contract, it was managed by the Office without the Auditor for quite a while.

Councilmember Yukimura: I do not...I think an Auditor is required for an audit of this kind of sensitivity and scope, but we have another way to do it and that is 3.12. Then the question is whether we are following the process correctly.

Council Chair Rapozo: Any other discussion?

Councilmember Yukimura: Yes. Will this Office, either our Clerk or yourself be approving the scope of work?

Council Chair Rapozo: The Clerk will be working with the Office of the Auditor.

Councilmember Yukimura: So that means it is really being done through, not through an auditor, but through the Clerk.

Council Chair Rapozo: No, it is going to be done through the Office of the Auditor utilizing a contract auditor that we are going to hire. That is how it is going to be done. I do not know how better to explain this, but I think I said that enough times today. I do not know what else to say. If you are not comfortable, if you want to have a deferral, make the motion. I am not supporting a deferral. I want to move forward and get this thing going, but again, it is the wish of this body

here. It is up to you folks. It really does not matter to me if the deferral motion was made, but if the body feels that they want to spend more time, I think we all know...to the Auditor, the controversy is not part of it. They are going to look at numbers, and other things...they are not going to see the scuttlebutt that is going on, they are not reading the blogs, they are going to look at the contract, payments, services provided, they are going to look at the records, books, and report back to us. That is what auditors do. They do not care about what the internal problems are. They are going to look at the numbers and that is what we need to look at. As I stated to many people that have called me about this issue, we are not going to get involved with how many cats get killed, or euthanized, because that is a policy decision that the Humane Society has, but we will look at the statutes and if the statute is saying the cat has to be held for forty-eight (48) hours and they are not, that is a problem. They are looking at the numbers and why in the world is one of the organizations here, the Feral Cat organization, is getting on their credit card statement for services provided, Swedish Chocolates. They are going to look at that. These are the kinds of things that the auditors look at, and not the trivial things or the concerns from the public.

Councilmember Chock: In regards to the previous audits that we just reviewed, because the Chair at the time was recused, I was overseeing the Auditor's Office, they made a presentation on it previously in their budget request. It was fully directed by the Auditor's Office without the Auditor there, and of course they had an independent contractor to do that. That is how it was completed. It seems to me that they have the capacity to go through that process. This does seem a little bit different just because there is a connection to the Council's role and as you speak there are somethings that are coming up for me in terms of, just delineation of powers. If there is no time sensitivity, for me, I am okay with a deferral. I am still in support of the Resolution. To move forward, I think it is again within our purview, and we would like to see it move forward.

Councilmember Yukimura: What is this risk report, I am not familiar, I have not seen it, and maybe you can explain it to us.

Council Chair Rapozo: It is part of their requirement, that before the Council request a performance audit, this is required. It was done for the Kilauea Gym Audit, that is really the only audit that we have ever done, but we are required to do a risk assessment.

Councilmember Yukimura: How come we did not get to see it?

Council Chair Rapozo: Because you did not introduce it. You can see it, if you want. I am sure it is not confidential to the Councilmembers, but it is just not available to the public.

Councilmember Yukimura: And what does it do?

Council Chair Rapozo: It talks about all the communications, the contract, the statute, the Humane Society's budget, and whatever pertains to the Humane Society and the contract with the County. Then, a recommendation by the staff of what needs to be audited.

Councilmember Yukimura: Was this done by our staff?

Council Chair Rapozo: Yes.

Councilmember Yukimura: I am impressed.

Council Chair Rapozo: We do not do enough audits, so everybody is in shock and ask, "Oh my, what do we do?" That is why we need to do more of them. Do you support the audit or not? Do you support us looking into the function or not? I understand your position, Councilmember Yukimura, you are looking at the words and making sure that we comply, but I have gotten word from the County Attorney's Office that we are in compliance and it is okay, it is legally sufficient, but I respect your request.

Councilmember Yukimura: Especially if we are doing it not often and this is kind of a new step, it would be really good to have a full County Attorney's written opinion before we embark on this kind of thing so that it is very clear, not just an oral opinion that you heard and had a discussion on, or an opinion that has been thrown together in two (2) days, because I have asked, but I had only six (6) days. That would be really good to have a legal foundation in writing for it. I guess I am going to move to defer.

Councilmember Yukimura moved to defer Resolution No. 2015-55.

Council Chair Rapozo: Any other discussion before we...

Councilmember Yukimura: Yes, before I make a motion, that is fine.

Councilmember Kaneshiro: I am in supportive of the audit. I know sometimes people think of an audit as a bad thing, but for me, I think of it as an opportunity. The things that we are auditing, internal controls, I think when we went through the budget, our County funds and its allocation, I had a question to the Humane Society about that. They had percentages next to their expenses and the certain percentages were the County's and they said, "Well it is based off our services," and those kinds of numbers can be audited. So I look at it as an opportunity to make things better. An audit is going to say where your weaknesses are and then they have an opportunity to strengthen it, which is a good thing. It will also give us confidence that our money are being spent properly, and the internal controls are tight. Obviously, we heard they might be a little loose in writing checks and putting the wrong description of what the review is for, but I am sure with education and proper approval having another person check the check that it is written to the correct description would be something that the auditor's might come up with, if they do find that it is a weakness. I am comfortable in what our County Attorney has said as far as moving forward. I think it is a good thing, and I am ready to move forward on it.

Council Chair Rapozo: Any other discussion?

Councilmember Yukimura: I am in favor of this audit for all the reasons that you all have mentioned, and as long as it is clearly and well established, but I think especially if we are doing it for the first time, we need to have the proper procedure down and the proper foundation. That is what I would like to see before we proceed.

Council Chair Rapozo: Any other discussion?

Councilmember Yukimura moved to defer Resolution No. 2015-55.



Council Chair Rapozo: Is there a second?

The motion to defer Resolution No. 2015-55 failed for a lack of a second.

Council Chair Rapozo: Motion fails for a lack of a second. The motion on the floor is to approve. Roll call please.

The motion for adoption of Resolution No. 2015-55 was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Kaneshiro, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Councilmember Yukimura: Chair?

Council Chair Rapozo: Yes.

Councilmember Yukimura: I would like to have staff do a follow-up asking for a written legal opinion establishing the legal clarity and process.

Council Chair Rapozo: So noted.

Councilmember Yukimura: Thank you.

#### BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2593) – A BILL FOR AN ORDINANCE TO AMEND ORDINANCE NO. B-2015-796, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND, HIGHWAY FUND, LIQUOR FUND, SOLID WASTE FUND, SEWER FUND, AND GOLF FUND (*Units 2, 3, and 4 Collective Bargaining Increases – \$912,369*): Councilmember Kuali'i moved for passage of Proposed Draft Bill (No. 2593) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 2, 2015, and referred to the Budget & Finance Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for passage of Proposed Draft Bill (No. 2593) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 2, 2015, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kaneshiro, Kagawa, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2594) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2015-796, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016, BY REVISING SECTION 19 OF THE OPERATING BUDGET PROVISOS: Councilmember Kuali'i moved for passage of Proposed Draft Bill (No. 2594) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 2, 2015, and referred to the Budget & Finance Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for passage of Proposed Draft Bill (No. 2594) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 2, 2015, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Hooser, Kaneshiro, Kagawa, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Proposed Draft Bill (No. 2595) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2015-796, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2015 THROUGH JUNE 30, 2016, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Kauai Police Department, Legal Analyst – \$124,165*): Councilmember Kuali'i moved for passage of Proposed Draft Bill (No. 2595), on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 2, 2015, and referred to the Budget & Finance Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Councilmember Yukimura.

Councilmember Yukimura: Do we have information in support of this? I think the Police Department said they were going to provide something.

Council Chair Rapozo: As far as?

Councilmember Yukimura: Information, I think, of how Maui works. I would like to get that information as soon as possible, if there are supporting information.

Council Chair Rapozo: During the budget, he had submitted the package, and maybe he can make that available to the Councilmembers.

Councilmember Yukimura: I hope there are some new information.

Councilmember Hooser: Out of courtesy, I will be voting in support for this on first reading, but I have serious concerns about adding more positions, and growing the budget. A hundred and twenty-four thousand one hundred and sixty-five dollars (\$124,165) does not sound like a lot of money with a large budget, but this is forever, usually, year after year after year. We have lots of needs in our county. We had discussion here the other day with homeless advocates and the Housing Agency talking about...we are asking them to do things for homelessness and do more things for affordable housing. A hundred and twenty-four thousand dollars (\$124,000) can go a long way for those ends. It could pay for six (6) homes or more; pay rents, pay lots of other things. I believe we have lots of other needs and I do not believe with all the need and the talk about fiscal responsibility and managing our budget that this is an appropriate time to expand our budget and spend more money on new positions. I will be expressing those opinions later and anxious in hearing the public testimony. Thank you.

Council Chair Rapozo: Thank you.

Councilmember Kaneshiro: We have had much information on this, so my question moving forward would be: what are they trying to accomplish with this new position and is it the best solution or bang for our buck. I know at budget time there were conversations on whether a legal analyst would be the correct person or adding a person to the County Attorney's Office, and I think there were back and forth on it. We will probably have to address that again as we go through the process.

Council Chair Rapozo: Any other discussion?

Councilmember Hooser: It is in the back?

Council Chair Rapozo: All the way in the back.

Councilmember Hooser: My last one is barking dogs.

Council Chair Rapozo: Third to the last page.

Councilmember Hooser: Is this being introduced by the Chair, the Police Department, or the Administration?

Council Chair Rapozo: I do not believe the Administration supports this, they made it clear during the budget. I am introducing it. I met with the Chief and we believe there is a need for it.

Councilmember Hooser: There was a follow-up to the question about the Chief and that struck me as...I do not think the Chief is the one asking for this, and I noticed the proposed draft bill does not say, "By Request."

Council Chair Rapozo: Yes.

Councilmember Hooser: So, the Chief is not requesting this.

Council Chair Rapozo: The Chief is not requesting.

Councilmember Hooser: Who is requesting this position?

Council Chair Rapozo: I am requesting the funding to put it into the Department so that the Chief can get a legal analyst.

Councilmember Hooser: Okay.

Council Chair Rapozo: Which is what he wants to do.

Councilmember Hooser: Okay.

Council Chair Rapozo: This request is coming after numerous discussions with the Chief. This actually expands back many years when this Council approved a legal analyst position, and when it went across after the budget, the Mayor took that position and put it in the County Attorney's Office.

Councilmember Hooser: Okay.

Council Chair Rapozo: That does not serve the purpose that the Chief needs at this moment right now.

Councilmember Hooser: With all due respect.

Council Chair Rapozo: Yes, please.

Councilmember Hooser: We had a conversation about a half an hour (.50) ago on the open space issue and the one and a half percent (1.5%). Much of the discussion here was consumed by, "Well, we just talk about this." "Did we not already vote this down already, so why are we talking about this again?" If I remember correctly, we also discussed and voted down on this during the budget time period. The same would apply, I would think, if those were the arguments we are using, for one, what is good for the goose is good for the gander.

Council Chair Rapozo: I agree.

Councilmember Hooser: It is a little disturbing on the rationale given, and it is not consistent from bill to bill. Policy differences are fine, but it is just a little disturbing when we argue one way and then all of a sudden, it is another issue and the same argument would not apply. We did vote this down in the budget some three (3) months ago, I believe.

Council Chair Rapozo: We did.

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: And I cannot remember which Councilmember said that we can bring it up at any time outside of the budget, and that is why it is here today. Let me give you a little bit of background, Councilmember Hooser, because I think it is important. In the last couple of years, there has been some major problems with prosecuting our cases. That is what has started this discussion with the Chief. I have been approached by numerous police officers who are very frustrated because a lot of the cases that they have been sending over to the Prosecutor's Office have not been prosecuted. They have been declining prosecutions. In other words, they have not been making it to first base. The problem is that there seem to be a problem between the Prosecutor's Office and the Police Department as far as the communication and the Chief is getting concerned because of the amount of cases that have been declined or plead down without the police officers being notified or involved. The other issue is accreditation and County Attorney Mauna Kea Trask during the budget session talked about, this is the ideal situation because their office is not set up to be policymakers. They are there to represent the departments and not to be policymakers. We have two (2) legal analysts here at Council Services, we have two (2) of them. The Chief does not even have one (1) and yet he is trying to get to accreditation where...with all what is going on in the police world today and law enforcement world where police officers are being criticized and scrutinized, and the Chief is looking at a legal analyst as helping him get through the day-to-day policy decisions that need to be made to achieve this accreditation. That is the reason for this. The Prosecutor's Office in the last month, I believe, three (3) or four (4) Prosecutors have left. He has now a very small staff. It will be even worse for the Police Department. My concern is the Police Department. Obviously, I want to make sure that they have the resources. My intent is not to make this a civil service position, and my intent would be that the Chief would have the funds to create a contract position that would not be long term. It would help him to get through the next three (3) months or so. At that point, the Council would decide whether or not to keep that position, but it is not intended to be a civil service position – you know the gift that keeps on giving. It would be one that would be short term, subject to Council approval on the contract.

Councilmember Hooser: It seems like this position is designed for someone with both policy experience and experience with prosecution of crimes, and that kind of thing. It sounds like it would be a limited field to find somebody like that, that is one question. Is there somebody in mind to take that position?

Council Chair Rapozo: I am not sure who the Chief...the Chief would have the opportunity to hire who he wanted to. In years back, I know he talked...back when we thought we had the position, in fact the position was approve, he had someone in mind from O'ahu that had been a legal analyst, but that never came through. I am not sure what his plan is, on who he would hire. If he would post it, I am not sure. At this point, I could not say.

Councilmember Hooser: So, he would not have to post it?

Council Chair Rapozo: No.

Councilmember Hooser: What would be the hiring process?

Council Chair Rapozo: It would be an exempt position.

Councilmember Hooser: So, he could hire whomever he wanted to.

Council Chair Rapozo: Correct.

Councilmember Hooser: My final question for now, it is kind of a budget issue, I am not sure if anybody is here to answer it. When we list a cost – a hundred and twenty-four thousand dollars (\$124,000) and some change, but it talks about salary benefits, retirement, health, and then there is a six thousand dollars (\$6,000), I remember, or something like that, for future...and I do not know what that is intended for. Do you see it?

Council Chair Rapozo: There is the salary, Social Security contribution, Health Fund contribution, retirement contribution, and Other Post-Employment Benefits (OPEB).

Councilmember Hooser: OPEB is health and retirement?

Council Chair Rapozo: It is the post-employment, we are required to pay that on every position.

Councilmember Hooser: It is an annual...

Council Chair Rapozo: Unfortunately, that is the OPEB and we fund a hundred percent (100%).

Councilmember Hooser: Okay. Thank you.

Council Chair Rapozo: Any other questions? Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for passage of Proposed Draft Bill (No. 2595), on first reading, that it be ordered to print, that a public hearing thereon be scheduled for September 2, 2015, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

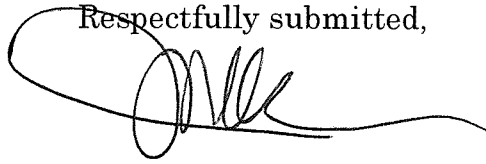
FOR PASSAGE:	Chock, Hooser, Kaneshiro, Kagawa, Kuali'i, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you all. With that, there is no further business for today. With no objections, this meeting is adjourned.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 6:40 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', with a large, sweeping loop at the beginning.

JADE K. FOUNTAIN-TANIGAWA  
County Clerk

:cy/dmc

(August 5, 2015)

FLOOR AMENDMENT

BILL NO. 2590, Draft 1, Relating to Repealing the Barking Dogs Law

Introduced by: Gary L. Hooser

Amend Bill No. 2590, Draft 1, by amending SECTION 3 to read as follows:

“SECTION 3. This ordinance shall take effect upon [its approval.]  
adoption of a comprehensive noise ordinance that also regulates barking dogs, or on  
August 9, 2019, whichever is sooner.”

(Material to be deleted is bracketed. New material to be added is underscored.)